

**INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE**

Medical Malpractice Reporting Requirements

Proposed Amendments: N.J.A.C. 11:1-7.1 and 7.3

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A.17:30D-17(a) and (b) and P.L. 2004 c. 17

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2004-416

Submit comments by December 31, 2004 to:

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The agency proposal follows:

Summary

The New Jersey Medical Care Access and Responsibility and Patients First Act, P.L. 2004, c. 17, (the Act), approved June 7, 2004, was the Legislature's response to a medical malpractice liability insurance crisis in this State. The crisis created an affordability problem for physicians who indicated that escalating premiums directly caused some of them to leave New Jersey to practice elsewhere, scale back their practices or retire from the practice of medicine altogether. The Act was designed to address this affordability problem by reforming three primary components of the medical malpractice system: comprehensive tort reform; changes to

New Jersey's health care system and tightening the regulation of medical malpractice insurers. The proposed amendment implements section 23 (codified at N.J.S.A. 17:30D-17) of the Act.

The proposed amendments require, in addition to the current requirement to report certain information to the State Board of Medical Examiners, any insurer or insurance association authorized to issue medical malpractice liability insurance in this State to notify the Commissioner of certain information relating to any medical malpractice claim settlement, judgment or arbitration award involving any practitioner licensed by the State Board of Medical Examiners and insured by the insurer or insurance association. The requirement to provide the notice will apply regardless of whether the practitioner is currently insured by the insurer or association at the time of the settlement, judgment or arbitration award. The Department proposes that the notice should be sent to the Commissioner on the form referenced in N.J.A.C. 11:1-7.3(c) or its equivalent within seven days of the claim settlement, judgment or arbitration award.

The proposed amendment provides for a comment period of 60 days, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendment should have a positive social impact on the medical malpractice liability insurance marketplace. The additional reporting requirement being imposed will enable the Department to better track medical malpractice awards in order to identify trends in the marketplace. The ramifications of the absence of any requirement to provide this data became evident during the legislative debate regarding medical malpractice insurance reform. Indeed, the Department was unable to adequately respond to certain requests for information

because the Department simply lacked the requisite information. With this information, the Department will be better able to address, in a proactive manner, potential problems in the marketplace, including problems related to limited access to certain types of healthcare in particular areas of the state, at an early stage in their development.

Economic Impact

The proposed amendment will have a positive economic impact on malpractice insurers, consumers and health care practitioners in the State. Armed with the data generated by the proposed amendment, the Department will be better equipped to identify potential problem areas in the marketplace and to formulate policies that will address these problems at an early stage.

The costs incurred by insurers to supply the required data should be minimal, as the data that is required to be reported to the Department is the same data insurers currently report to the Medical Practitioner Review Panel, and the form on which the data will be supplied is the same form currently utilized for that purpose or its equivalent.

Federal Standards Statement

The proposed amendments are not subject to any Federal standards or requirements. Therefore, a Federal standards analysis is not required.

Jobs Impact

To the extent that the Act contains provisions that address factors which affect medical malpractice liability insurance rates and provides options which, if exercised by policyholders, can reduce those rates, the number of practitioners choosing to retire, leave New Jersey or scale

back their practices should decrease. Thus, these and the other rules implementing that Act should have a positive jobs impact on the medical community.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed amendments.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the proposed amendments.

Regulatory Flexibility Analysis

Some New Jersey medical malpractice insurers may be small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments impose no additional substantial compliance requirements on these entities. This is because insurers currently provide essentially the same information to the State Board of Medical Examiners. Insurers will be able to provide information on the claim settlement, judgment or arbitration awards to the Commissioner utilizing existing resources. The proposed amendments implement section 23 (codified at N.J.S.A. 17:30D-17) of P.L. 2004 c. 17, which requires all insurers authorized to issue medical malpractice liability insurance in New Jersey, regardless of their size, to submit this information to the Commissioner. Accordingly, the proposed amendments do not make any differentiation based on business size. The Department does not believe that insurers will need to utilize any additional professional services in order to fulfill these new requirements. Permitting insurers to utilize the National Practitioner Data Bank Medical Malpractice Payment Report Form with a slight modification, or its equivalent, which they may currently utilize for

other purposes, will minimize the compliance burden imposed by the new rules on all insurers, including any small businesses.

Smart Growth Impact

The proposed amendments will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 7. MEDICAL MALPRACTICE REPORTING REQUIREMENTS

11:1-7.1 Purpose and scope

(a) The purpose of these rules is to implement N.J.S.A. 17:30D-17(a), [and] (b), **and (h)**. These statutory provisions require insurers, insurance associations and licensed medical practitioners to notify **the Commissioner and** the Medical Practitioner Review Panel of any medical malpractice claim settlements, judgments, or arbitration awards involving a licensed practitioner[.]. **They also require notification to the Medical Practitioner Review Panel of** any termination or denial of malpractice insurance coverage to a practitioner, or any surcharge assessed against a practitioner. These [proposed] rules establish the form and content of the noticesu required under these statutory provisions.

(b) (No change.)

11:1-7.3 Medical malpractice reporting requirements

(a) – (f) (No change.)

(g) All insurers or insurance associations authorized to issue medical malpractice liability insurance in the State shall notify the Commissioner of Banking and Insurance of any medical malpractice claim settlement, judgment or arbitration award involving any practitioner licensed by the State Board of Medical Examiners and insured by the insurer or association. The notification shall be made regardless of whether the practitioner is currently insured by the insurer or association at the time of the settlement, judgment or arbitration award. The notifications shall be made on the Medical Malpractice Payment Report form of the National Practitioner Data Bank or its equivalent as produced on the Department's website. The notification shall not include the name or other identifying information of the practitioner, but shall contain the following information:

1. The specialty or area of professional practice of the practitioner ;
2. The amount of the settlement, judgement or arbitration award;
3. The information pertaining to the claim settlement, judgment or arbitration award required to be reported to the Medical Practitioner Review Panel pursuant to (c)3 above; and
4. Any other information related to the claim settlement, judgement or arbitration award specified by the Commissioner on the form produced on the Department's website.

(h) The notice referred to in (g) above shall be delivered to the Department electronically no later than seven days after the settlement, judgement or arbitration award

is officially agreed to or entered. The notice shall be e-mailed to the Department at: (an e-mail address to be specified in the notice of adoption of these rules).

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