

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

Medical Malpractice Insurance – Renewal and Nonrenewal Notices

Proposed Amendment: N.J.A.C. 11:1-20.2

Proposed New Rule: N.J.A.C. 11:27-6

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

Authority: N.J.S.A.17:1-8.1, 17:1-15e and 17:30D-31 (P.L. 2004 c. 17, § 32)

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

Proposal Number: PRN 2004-417

Submit comments by December 31, 2004 to:

Douglas Wheeler, Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Banking and Insurance
P.O. Box 325
Trenton, NJ 08625-0325
Fax: (609) 292-0896
Email: Legsregs@dobi.state.nj.us

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 amendments and new rule implement section 19 of the Act. That section requires medical malpractice liability insurance insurers to mail or deliver a notice of renewal or nonrenewal not less than 60 days prior to the expiration of a policy. N.J.A.C. 11:1-20.2 currently requires a 30 day minimum notice. The 60 day minimum notice will provide additional notice to medical malpractice insurance insureds on whether their policy will be renewed and if there will be any changes in premium or terms. Insureds whose policies will not be renewed will have sufficient time to obtain a replacement policy without a lapse of coverage. Other requirements in the current rule, including that the reason for non-renewal be given, are continued.

This rule proposal 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 amendments and new rule should have a positive social impact by giving health care practitioners additional time to shop for alternative coverage if their medical malpractice liability insurance policy will not be renewed or if it is being renewed at an unacceptable rate. This, in turn, should alleviate the problem of limited access to certain types of healthcare in some areas of the state caused by practitioners terminating or curtailing their practices as a result of onerous medical malpractice insurance premium rates.

The proposed amendments and new rule would apply to all New Jersey medical malpractice insurers.

Economic Impact

The Department expects that the proposed amendments and new rule will have a positive economic impact. Health care practitioners will have additional time to know if their malpractice insurance coverage will be renewed and at what premium and if not renewed, to shop around for a new policy. Once any necessary system adjustments have been made, insurers should not incur any increase in costs as a result of providing the extra 30 days notice of renewal or nonrenewal to medical malpractice insurance policyholders required by the proposed amendments and new rule.

Federal Standards Statement

The proposed amendments and new rule 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 provides options which, if exercised by policyholders, can reduce medical malpractice liability insurance 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 and new rule together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

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

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 and new rule will impose compliance requirements on these entities. Insurers will be required to provide a minimum 60 days notice of renewal or nonrenewal of medical malpractice insurance policies. Under current rules, insurers must give a minimum of 30 days notice. The proposed new rules will not require the services of any outside professionals because insurers can fulfill the new compliance requirements that are imposed, in the course of their normal business operations and procedures.

The purpose of the proposed amendments is to enable medical malpractice insureds to have additional time of a notice of renewal or nonrenewal. This purpose does not vary based upon business size. Moreover, the 60-day notice requirement is mandated by statute for all insurers with no exceptions based on company size. Accordingly, no differentiation based on business size is provided.

Smart Growth Impact

The proposed amendments and new rule 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 20. **RENEWAL**, CANCELLATION AND NONRENEWAL OF
COMMERCIAL AND HOMEOWNERS INSURANCE POLICIES

11:1-20.2 **Renewal**, [Nonrenewal] **nonrenewal** and cancellation notice requirements

(a) (No change.)

(b) **Subject to N.J.A.C. 11:1-20.2(m) for medical malpractice liability insurance policies.** [No] no notice of nonrenewal shall be valid unless it is mailed or delivered by the insurer to the insured not more than 120 days nor less than 30 days prior to the expiration of the policy.

(c) **Subject to N.J.A.C. 11:1-20.2(m) for medical malpractice liability insurance policies.** [With] **with** respect to payment of the renewal premium, notice of the amount of the renewal premium and any change in contract terms shall be given to the insured in writing not more than 120 days nor less than 30 days prior to the due date of the premium and shall clearly state the effect of nonpayment of the premium by the due date.

(d)-(l) (No change.)

(m) Each notice of renewal or nonrenewal by an insurer authorized to transact medical malpractice liability insurance in this State for a medical malpractice liability policy shall comply with the requirements applicable to such notices set forth in (a) through (l) above, except that such notices shall be mailed or delivered by the insurer to the insured not less than 60 days prior to the expiration of the policy.

CHAPTER 27

MEDICAL MALPRACTICE LIABILITY INSURANCE

SUBCHAPTER 1. – 5. (RESERVED)

SUBCHAPTER 6. RENEWAL AND NONRENEWAL NOTICES

11:27-6.1 Renewal and nonrenewal notices

Medical malpractice liability insurers shall comply with N.J.A.C. 11:1-20 with regard to notices of renewal and nonrenewal of medical malpractice liability insurance policies.

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