

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Medical Malpractice Insurance
Medical Malpractice Liability Insurance Premium Assistance Fund - Premium Subsidy
Application Process; Distribution of Funds

Proposed Amendments: N.J.A.C. 11:27-7.6 and 7.7

Authorized By: Donald Bryan, Acting Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, and 17:30D-28 et seq.

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

Proposal Number: PRN 2006-101

Submit written comments by June 2, 2006 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), provided various reforms to address the vital interest to the State of ensuring that health care practitioners can continue to provide high-quality health care, and to ensure that such health care continues to be available to the residents of this State, including access to a full spectrum of health care providers, including highly trained physicians in all specialties.

One of the means by which the Act seeks to achieve these goals is the establishment of the Medical Malpractice Liability Insurance Premium Assistance Fund (the Fund), which is intended to provide premium subsidies to certain practitioners and health care providers, as defined in the Act, to help ensure that access to care in particular specialties or subspecialties is not threatened as a result of the cost of medical malpractice liability insurance in this State. The rules were originally adopted in accordance with N.J.S.A. 17:30D-29g, and became effective on November 17, 2004 upon their filing with the Office of Administrative Law. Thereafter, the concurrently proposed rules were adopted on May 16, 2005 pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

On February 3, 2005, the Department of Banking and Insurance (Department) issued a public notice as required by N.J.S.A. 17:30D-28 et seq. and N.J.A.C. 11:27-7 regarding the determination of eligibility for a premium subsidy from the Fund. On June 29, 2005, the Commissioner of Banking and Insurance (Commissioner) issued Order No. A05-122 which set forth the specialties and subspecialties that would be eligible to apply for a subsidy from the Fund for 2004.

N.J.A.C. 11:27-7.6(d) provides that no application shall be accepted if the licensee is required to pay the annual assessment referenced in N.J.A.C. 11:27-7.3, but has not paid the assessment by the due date on the notice. This has caused confusion in that some of the assessing agencies had, after issuing an initial notice with a specified payment date, sent out additional notices with later payment dates. The Department proposes to amend this rule to recognize that these practices may occur by providing that the assessment must be paid by the final date for payment established by the assessing agency.

The Department is also proposing to amend N.J.A.C. 11:27-7.6 to add a new subsection (e) to confirm that no applications will be accepted if the licensee does not have a bona fide office in this State. N.J.S.A. 17:30D-29b provides that a provider is not required to pay the \$75.00 assessment if he or she does not have a bona fide office in this State for the practice of the specialty or subspecialty eligible for the subsidy. The Department provided in N.J.A.C. 11:27-7.6(d) that no applications will be accepted if the licensee did not pay the assessment by the due date. Accordingly, the intent of the rules, consistent with the intent of the Act to ensure adequate access to health care in this State as well as to provide financial assistance to New Jersey licensed health care professionals impacted by the cost of medical malpractice liability insurance in this State, was to provide a subsidy only to those practitioners with a bona fide office in this State for the practice of the specialty or subspecialty found eligible for the subsidy pursuant to the Act. This intent is also evidenced by N.J.S.A. 17:30D-30d(1) and reflected in N.J.A.C. 11:27-7.8, which require practitioners who receive a subsidy to continue to practice in their specialty in this State for two years from their receipt of the subsidy. The Department believed that this would be addressed by limiting the subsidy only to those that paid the assessment, which should have encompassed only those with a bona fide office in this State. However, the Department has become aware that some providers with no bona fide office in this State paid the assessment. Accordingly, to confirm that in order to be eligible for the subsidy the licensee must have a bona office in this State, the Department is proposing to amend the rule as set forth above.

The current text of N.J.A.C. 11:27-7.7(a) provides that the amount of the subsidy to be distributed for the relevant period shall be in the proportion that the qualifying increases in premiums and funding obligations for all eligible classes relate to the total amount of monies

collected and allocated for distribution pursuant to N.J.S.A. 17:30D-29e(1), less administrative costs incurred in administering the Fund. In accordance with N.J.S.A. 17:30D-30, and as recognized under N.J.A.C. 11:27-7.5(c), the Commissioner may waive that criteria for eligibility if he or she determines that access to care for a particular specialty or subspecialty is threatened because of an inability of a sufficient number of practitioners in that specialty or subspecialty to practice in a geographic area of the State. The findings made by the Commissioner in Order No. A05-122 related to a finding that access to care was threatened in certain enumerated specialties and subspecialties. Where access to care is used as the basis for determining eligibility for a subsidy, the amount of the subsidy distributed for the relevant period would not relate to qualifying increases in premiums and funding obligations for all eligible classes. Rather, the amount of the subsidy to be distributed would be in the proportion that the number of qualifying practitioner-applicants in the eligible classes relates to the total amount of monies collected and allocated for distribution pursuant to the Act, less administrative costs. The Department believed that this would be self-evident. However, questions and confusion apparently have arisen regarding the determination of the subsidy amounts to be distributed from the Fund for the relevant period. Accordingly, the Department proposes to amend N.J.A.C. 11:27-7.7(a) to clarify that where eligibility for the subsidy is based on a determination that access to care is threatened in accordance with N.J.A.C. 11:27-7.5(c), the amount of the subsidy to be distributed for the relevant period shall be in the proportion that the number of qualifying practitioner-applicants in the eligible class relates to the total amount of monies collected and allocated for distribution pursuant to N.J.S.A. 17:30D-29e(1), less administrative costs incurred in administering the Fund. The Department is also proposing other clarifying amendments to this rule as a matter of form.

In addition, in response to concerns raised by interested parties, N.J.A.C. 11:27-7.7(a) is proposed to be amended to provide that, where a determination is made that access to care is threatened, the Commissioner may adjust the proportional amount of the subsidy distributed to an eligible class based on the average expenditure for medical malpractice liability insurance by practitioners in an eligible class relative to the average expenditure by practitioners in the other eligible classes. The formula utilized shall be set forth in the Order issued pursuant to N.J.A.C. 11:27-7.5(f)2 based on the prior year's data. This approach is designed to help ensure that eligible practitioners receive subsidies proportionate to their expenditures as a class for medical malpractice liability insurance. Under the procedures utilized for the 2004 subsidy (distributed in 2005), all eligible practitioners received the same subsidy amount irrespective of the amount of their expenditures, as a class, for medical malpractice liability insurance. Accordingly, practitioners paying less for medical malpractice liability insurance relative to those in other eligible classes had a greater proportion of their expenditures reimbursed by the subsidy, while those paying more received a lower proportionate share of those expenditures. Thus, the subsidy for 2004 had less of an ameliorative effect on eligible practitioners in those classes which had the greatest average expenditure.

The Department believes that the proposed amendments should reduce confusion regarding the determination of eligibility for the subsidy and the amounts to be distributed from the Fund and should help ensure that eligible practitioners receive an appropriate subsidy relative to their expenditures for medical malpractice liability insurance.

A 60-day comment period is provided for this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

As set forth above, the proposed amendments will codify existing procedures for determining eligibility for the subsidy, and the amounts to be distributed from the Fund where eligibility for the subsidy is based on a determination that access to care is threatened in accordance with N.J.A.C 11:27-7.5(c). This, in turn, should reduce any confusion regarding the determination of eligibility for a subsidy and amounts to be distributed from the Fund for a relevant period. In addition, providing for the adjustment of the subsidy based on the average expenditure for medical malpractice liability insurance by practitioners in an eligible class relative to the expenditures by practitioners in other eligible classes will help ensure that the subsidies provided appropriately relate to the expenditures of those in an eligible class.

Economic Impact

No additional costs will be incurred by applicants or other persons in connection with the proposed amendments. As set forth above, the proposed amendments merely codify the existing procedures for determination of eligibility for a subsidy and for determinations of amounts of the distribution where eligibility for the subsidy is based on a determination that access to care is threatened in accordance with N.J.A.C. 11:27-7.5(c), and provide for adjusting the proportionate share of the subsidy received by eligible practitioners. This may impact the amount of the subsidy ultimately received by eligible practitioners in those classes of specialties to which access to care is deemed threatened in the manner described in the Summary above, should the Commissioner make such a determination.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that any jobs should be generated or lost as a result of the proposed amendments.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposal together with their comments on other aspects of the proposal.

Agriculture Industry Impact

The proposed amendments will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

A Regulatory Flexibility Analysis is not required because the proposed amendments impose no reporting, recordkeeping or other compliance requirements on “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As noted above, the proposed amendments merely clarify and codify existing procedures for determinations of eligibility for the subsidy, and the amount of the subsidy to be distributed for the relevant period where eligibility for the subsidy is based on a determination that access to care in certain specialties is threatened in accordance with N.J.A.C. 11:27-7.5(c).

Smart Growth Impact

The proposed amendments will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

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

11:27-7.6 Application process

(a) - (c) (No change.)

(d) No application shall be accepted if the licensee is required to pay the annual assessment referenced in N.J.A.C. 11:27-7.3 but has not paid the assessment by the **final** due date [on the notice] **for payment established by the assessing agency.**

(e) No application shall be accepted if the licensee does not maintain a bona fide office in this State at which the licensee practices a specialty or subspecialty designated as eligible for the subsidy pursuant to N.J.A.C. 11:27-7.5.

11:27-7.7 Distribution of funds

(a) [The] **When distributed based upon a determination of eligibility as set forth in N.J.A.C. 11:27-7.5(a) and (b), the** amount of the subsidy to be distributed for a relevant period shall be in the proportion that the qualifying increases in premiums and funding obligations for all eligible classes relate to the total amount of monies collected and allocated for distribution pursuant to N.J.S.A. 17:30D-29e(1), less administrative costs incurred in administering the Fund. **Where eligibility for the subsidy is based on a determination that access to care is threatened in accordance with N.J.A.C. 11:27-7.5(c), the amount of the subsidy to be distributed for the relevant period shall be in the proportion that the number of qualifying practitioner-applicants in the eligible classes relates to the total amount of monies collected and allocated for distribution pursuant to N.J.S.A. 17:30D-29e(1), less administrative costs incurred in administering the Fund. The Commissioner may adjust the proportional amount of the subsidy distributed to an eligible class based on the average expenditure for medical malpractice liability insurance by practitioners in a class relative**

to the average expenditure by practitioners in the other eligible classes. The formula utilized to make such an adjustment shall be set forth in the Order issued pursuant to N.J.A.C. 11:27-7.5(f)2 and applied to the data collected pursuant to N.J.A.C. 11:27-7.4 for the year to which the subsidy pertains.

(b) (No change.)

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