

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
OFFICE OF PROPERTY AND CASUALTY

Medical Malpractice Liability Insurers - Biennial Reporting of Rate Modifiers

Proposed New Rules: N.J.A.C. 11:27-13

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:22A-1 et seq., and 17:23-20 et seq., and P.L. 2004, c. 17

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

Proposal Number: PRN 2008-375

Submit comments by January 2, 2009 to:

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The agency proposal follows:

Summary

In the recent past, the medical malpractice liability insurance market has been strained in New Jersey, as well as throughout the nation. The issues of availability and affordability of medical malpractice liability insurance have been matters of concern. One consequence of availability and affordability problems with medical malpractice liability insurance is the potential negative impact on New Jersey residents' access to high-quality health care. To that end, the Legislature enacted the New Jersey Medical Care Access and Responsibility and Patients First Act, P.L. 2004, c. 17, which provides various reforms to address the vital interests

of the State in 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. Pursuant to N.J.S.A. 17:29AA-1 et seq., the Commercial Deregulation Act of 1982, the rates for medical malpractice liability insurance issued in New Jersey are required to be filed with, but are not subject to prior approval by, the Department of Banking and Insurance (Department). The Act does authorize the Department to contest rates that are excessive, inadequate or unfairly discriminatory. The Department is concerned that premiums for medical malpractice liability insurance have been subject to significant variations resulting from underwriting cycles. While the Department normally becomes aware of these changes only when rate revisions are filed, insurers often increase or decrease the use of internal rating factors, known as rate modifiers, prior to filing new rates. Rate modifiers affect surcharges and discounts. The shifts toward smaller discounts or toward surcharges indicate the beginning of a “hard” market, where coverage becomes less available and affordable, while shifts toward larger discounts indicate the beginning of a “soft” market, where coverage becomes more available and affordable.

The Department is proposing these new rules to require medical malpractice liability insurers authorized to transact business and writing physicians and surgeons coverage in this State to file specified information so that the Department may evaluate the impact of rate modifiers on premiums and the medical malpractice liability insurance market annually for the six-month periods January 1 through June 30 and July 1 through December 31. These proposed new rules generally codify and enhance the current biennial filing requirements under Order No. A07-105. A summary of the proposed new rules follows.

Proposed N.J.A.C. 11:27-13.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:27-13.2 sets forth the definitions of terms used in the subchapter.

Proposed N.J.A.C. 11:27-13.3 provides that all insurers shall file with the Department biennially the information set forth in proposed Exhibit 1 in the Appendix to the subchapter no later than August 1 and February 1 of each year, for the immediately preceding six-month periods of January 1 through June 30 and July 1 through December 31, respectively. In addition, as was provided in Order No. A07-105, the information filed pursuant to this subchapter shall be deemed proprietary and therefore be kept confidential and not be considered a public record pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. and 17:23-24f, except information otherwise filed pursuant to N.J.S.A. 17:29AA-1 et seq.

Proposed N.J.A.C. 11:27-13.4 sets forth penalties for violations of the subchapter.

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 notice 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 new rules codify and expand existing filing requirements with respect to rate modifiers used by medical malpractice liability insurers writing physicians and surgeons coverage in this State. The proposed new rules will provide information to the Department on a timely basis regarding actions taken by medical malpractice liability insurers that may contribute to volatility in and the cyclical nature of underwriting in the medical malpractice liability insurance market, and the hard and soft markets that result, which ultimately impact on the provision of high-quality health care to residents of this State.

### Economic Impact

Insurers transacting medical malpractice liability insurance in this State and writing physicians and surgeons coverage will be required to file the information required by these proposed new rules. The Department does not believe that any additional costs will be imposed by the proposed new rules in that they generally codify existing requirements or require the reporting of new information that should be readily available. No new additional professional services should be required by insurers to comply with the proposed new rules.

### Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules 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 new rules.

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 new rules will not have an impact on the agriculture industry in New Jersey.

### Regulatory Flexibility Analysis

The proposed new rules will apply to few, if any, small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that the proposed new rules apply to small businesses, they will apply to insurers transacting medical malpractice liability insurance in this State and writing physicians and surgeons coverage in this State. As noted in the Summary and Economic Impact above, the proposed new rules generally codify and expand filing requirements related to rate modifiers used by medical malpractice liability insurers in this State to provide the Department with timely information regarding the use of such modifiers that can contribute to volatility in the medical malpractice liability insurance market. As noted above, the cyclical nature of rates for medical malpractice liability insurance can have a negative impact on the provision of high-quality health care to the residents of this State. As was also noted above, the Department believes that any additional costs to insurers to comply with these rules should be minimal in that insurers are either currently required to file such information pursuant to Order No. A07-105, or the information is otherwise readily available. No new professional services should be required by insurers in order to comply with the proposed new rules.

As was noted above, the purpose of the proposed new rules is to codify and enhance the existing biennial reporting requirements related to rate modifiers used by medical malpractice liability insurers to enable the Department to monitor the use of such modifiers, given their potential impact on the medical malpractice liability insurance market in this State, and ultimately to the provision of health care to residents of this State. These goals do not vary based

on business size. Accordingly, the proposed new rules provide no differentiation in compliance requirements based on insurer size.

#### Smart Growth Impact

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

#### Housing Affordability Analysis

The proposed new rules will not have any impact on housing affordability in this State in that they apply to filings by medical malpractice liability insurers.

#### Smart Growth Development Impact

The Department believes that there is an extreme unlikelihood that the proposed new rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the new rules apply to filings by medical malpractice liability insurers.

Full text of the proposed new rules follows:

SUBCHAPTER 13. MEDICAL MALPRACTICE LIABILITY INSURERS -  
BIENNIAL REPORTING OF RATE MODIFIERS

11:27-13.1 Purpose and scope

(a) The purpose of this subchapter is to provide for the biennial reporting of information related to rate modifiers used by medical malpractice liability insurers writing physicians and surgeons coverage in this State.

(b) This subchapter shall apply to all insurers authorized to transact medical malpractice liability insurance and writing physicians and surgeons coverage in this State.

11:27-13.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Department” means the New Jersey Department of Banking and Insurance.

“Insurer” means an insurer authorized to transact medical malpractice liability insurance in this State, and that is writing physicians and surgeons coverage in this State.

11:27-13.3 Biennial reporting requirements

(a) All insurers shall file with the Department biennially the information set forth in Exhibit 1 in the Appendix to this subchapter, incorporated herein by reference, no later than August 1 and February 1 of each year, for the immediately preceding six month periods of January 1 through June 30 and July 1 through December 31, respectively, as applicable.

(b) With the exception of information otherwise filed pursuant to N.J.S.A. 17:29AA-1 et seq., information filed pursuant to this subchapter shall be deemed proprietary and therefore kept confidential pursuant to N.J.S.A. 17:23-24f, and shall not be considered a public record pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

(c) The information filed pursuant to this subchapter shall be filed either electronically and sent to [reports@dobi.state.nj.us](mailto:reports@dobi.state.nj.us), or on a CD-ROM sent to:

Office of Property and Casualty  
New Jersey Department of Banking and Insurance  
20 West State St.  
P.O. Box 325  
Trenton, NJ 08625-0325.

#### 11:27-13.4 Penalties

Failure to comply with the provisions of this subchapter shall result in the imposition of penalties as authorized by law, including, but not limited to, penalties authorized pursuant to N.J.S.A. 17:33-2.