

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

Medical Malpractice Insurance  
Prohibited Premium Increase

Proposed Amendment: N.J.A.C. 11:27-5.3

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-31. (P.L. 2004 c. 17, § 32)

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

Proposal Number: PRN 2006-100

Submit 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), 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 focusing on 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 clarify the implementation of Section 17 of the Act, N.J.S.A. 17:30D-22. This section prohibits insurers authorized to transact medical malpractice liability insurance in this State from assigning an increased premium on any medical malpractice liability insurance policy because of a claim of medical negligence or malpractice against the insured, if the insured is dismissed from an action alleging medical malpractice which was based upon that claim within 180 days of the filing of the last responsive pleading in the action and where no indemnity payment had been made by the insurer on that claim.

The proposed amendment reflected in new N.J.A.C. 11:27-5.3(b) sets forth the prohibition against assigning an increased premium for a new medical malpractice insurance policy if a civil proceeding is dismissed against the insured in the early stages where no indemnity payment was made by the insurer. The proposed amendment to former subsection (b) (to be recodified as new (c)), requires that where a higher premium was previously assigned based upon a then-pending claim that was subsequently dismissed as set forth in the rule, the next succeeding premium calculation shall reflect the elimination of this claim.

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 should have a positive social impact by giving New Jersey health care providers and practitioners confidence that their premiums will not be raised because of their being named in a lawsuit which is promptly dismissed as to them. Moreover, these

proposed amendments should provide relief to those health care practitioners who experienced rate increases simply because they were named in a lawsuit, and not because of a determination of any culpability or wrongdoing on their part. 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.

### **Economic Impact**

The Department expects that the proposed amendments will have a positive economic impact upon healthcare providers and malpractice insureds. As a result of these proposed amendments, such providers and insureds will not be subject to premium increases of their malpractice insurance coverage based solely on the fact that a malpractice claim was filed, provided that the related civil action was dismissed at an early stage in the legal proceedings. Insurers will be required to absorb the costs of defending legal actions that are dismissed within the 180-day timeframe referenced in the proposed amendments. To permit insurers to increase premiums to cover such costs would frustrate the legislative intent underlying N.J.S.A. 17:30D-22. These costs are less than the cost of defending an action through the entire discovery and trial process.

### **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 New Jersey Medical Care Access and Responsibility and Patients First Act provides options which, if exercised by policyholders, can reduce medical malpractice liability insurance rates for health care practitioners, the number of practitioners choosing to retire, leave New Jersey or scale back their practices should decrease. Thus, these proposed amendments along with 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 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.

### **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 will impose compliance requirements on these entities. Insurers will not be able to increase premiums for medical malpractice insurance policies if certain conditions are met. Compliance costs are discussed in the Economic Impact above.

The purpose of the proposed amendments is to enable insureds to avoid a premium increase based on a lawsuit being filed alleging medical negligence or malpractice if it is

dismissed as to that insured prior to or within 180 days of the filing of the last responsive pleading. The proposed amendments 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 these rules does not vary based upon business size. Accordingly, no differentiation based on business size is provided.

### **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]):

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(a) (No change.)

(b) **In the assignment of the premium of any new business medical malpractice liability insurance policy, an insurer authorized as set forth in (a) above shall not consider a claim of medical negligence or malpractice against the insured if the insured is dismissed from a lawsuit alleging medical negligence or malpractice based upon that claim, with no indemnity payment by the insurer, prior to or within 180 days after the filing of the last responsive pleading in the action.**

[(b)] (c) An insurer authorized as set forth in (a) above [may increase the] **which considers, in the assignment of a** premium [of] **on** any medical malpractice liability insurance policy [upon renewal on the basis of] a claim of medical negligence or malpractice against the insured which [is] **was** pending at the time of [renewal] **the assignment of a premium shall,** [. In] **in** the event [, however,] that a lawsuit based upon that claim is subsequently dismissed as to the insured [during the term of the renewed policy or a subsequent renewal and] within 180 days after the filing of the last responsive pleading in the action, with no indemnity payment by the insurer attributable to that claim, [the insurer shall,] upon the renewal next succeeding such a dismissal, reflect the elimination of this claim in the calculation of the renewal premium.

[(c)] **(d)** (No change in text.)