

CHAPTER 27

MEDICAL MALPRACTICE LIABILITY INSURANCE

Authority

N.J.S.A. 17:1-8.1, 17:1-15e, 17:30D-20 (P.L. 2004, c.17, § 15), 17:30D-27 and 17:30D-28 et seq.

Source and Effective Date

R.2005 d.167, effective June 6, 2005.
See: 36 N.J.R. 4875(a), 37 N.J.R. 2036(a).

Chapter Expiration Date

Chapter 27, Medical Malpractice Liability Insurance, expires on June 6, 2010.

Chapter Historical Note

Chapter 27, Medical Malpractice Liability Insurance, Subchapter 7, Medical Malpractice Liability Insurance Premium Assistance Fund—Premium Subsidy, was adopted as special new rules by R.2004 d.461, effective November 17, 2004. See: 36 N.J.R. 5970(a). Subchapter 7, Medical Malpractice Liability Insurance Premium Assistance Fund—Premium Subsidy, was adopted as concurrent new rules by R.2005 d.186, effective May 16, 2005. See: 36 N.J.R. 5970(a), 37 N.J.R. 2207(a).

Subchapter 3, Mandatory Deductibles, adopted as new rule by R.2005 d.167, effective June 6, 2005, (operative October 18, 2005). See: 36 N.J.R. 4875(a), 37 N.J.R. 2036(a). Subchapter 5, Prohibited Premium Increase, Subchapter 6, Renewal and Nonrenewal Notices, Subchapter 8, Officers, Directors and Board Members of Medical Malpractice Insurers were adopted as new rules by R.2005 d.168, d.169 and d.170 respectively, effective June 6, 2005. See: 36 N.J.R. 4878(a), 37 N.J.R. 2038(a); 36 N.J.R. 4871(a), 37 N.J.R. 2040(a); 37 N.J.R. 205(a), 37 N.J.R. 2041(a), respectively. See: Source and Effective Date.

Subchapter 4, Premium Payment Installments, was adopted as new rules by R.2005 d.188, effective June 20, 2005 (operative October 18, 2005). See: 36 N.J.R. 4876(a), 37 N.J.R. 2205(b).

Subchapter 1, General Provisions, was adopted as new rules by R.2005 d.243, effective July 18, 2005. As a part of R.2005 d.243, effective July 18, 2005 (operative October 18, 2005), Subchapter 2, Optional Policy Provision—Right to Consent to Settlement, was adopted as new rules. See: 36 N.J.R. 4873(b), 37 N.J.R. 2694(a).

Subchapter 9, Medical Malpractice Liability Insurance Purchasing Alliances, was adopted as new rules by R.2005 d.268, effective August 15, 2005. See: 37 N.J.R. 1673(a), 37 N.J.R. 3043(b).

Subchapter 10, Structured Settlements and Furnishing of Bonds, was adopted as new rules by R.2006 d.278, effective August 7, 2006. See: 37 N.J.R. 2294(a), 38 N.J.R. 3178(a).

Subchapter 11, Reporting Requirements, was adopted as new rules by R.2009 d.96, effective March 16, 2009. See: 40 N.J.R. 1065(a), 41 N.J.R. 1250(b).

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family, either through the purchase of an annuity or the establishment of a trust fund, or by another means approved by the court.

11:27-10.3 Structured settlement bond/security requirements

(a) Pursuant to N.J.S.A. 17:30D-27, the judgment debtor or the judgment debtor's insurer shall post a bond or security or, with the written consent of the judgment creditor, assign, as set forth in (b) below, its periodic payment obligations to an insurer authorized to write insurance business in New Jersey, in order to assure full payment of non-economic damages awarded in excess of \$1 million, or as otherwise agreed to by the parties in a medical malpractice matter. The bond or other security requirements are specified below:

1. A bond shall not be deemed adequate unless it is written by a company that is authorized to do business in this State and is rated A-, or better, by A.M. Best Company or maintains a comparable rating with Standards & Poor's, Moody's Investors Services or Fitch Ratings. A "comparable rating," means a rating of at least A- from Standards & Poor's, at least A3 from Moody's Investors Services, or at least A- from Fitch Ratings.

i. No bond may be cancelled or be subject to cancellation unless at least 60 days advance written notice is filed with the court and the claimant.

2. A letter of credit may also serve as security. Letters of credit shall comply with the requirements of N.J.A.C. 11:2-28.10.

3. Additionally, security deposits shall adhere to the requirements of N.J.A.C. 11:2-32, Custodial Deposits.

4. No separate bond or security shall be required for structured payment agreements funded with an annuity that is issued by a company that is rated A-, or better, by A.M. Best Company or maintains a comparable rating with Standards & Poor's, Moody's Investors Services or Fitch Ratings. A "comparable rating," means a rating of at least A- from Standards & Poor's, at least A3 from Moody's Investors Services, or at least A- from Fitch Ratings.

(b) A judgment debtor or a judgment debtor's insurer may, with the written consent of the judgment creditor, enter into an assignment agreement with an insurer that meets the requirements set forth in (a) above with respect to an insurance company that issues a bond to secure the performance of a structured settlement agreement.

Amended by R.2008 d.205, effective July 21, 2008.
See: 40 N.J.R. 1748(a), 40 N.J.R. 4329(a).

Rewrote the introductory paragraph of (a), the introductory paragraph of (a)1, and (a)4; and added (b).

SUBCHAPTER 11. REPORTING REQUIREMENTS

11:27-11.1 Purpose and scope

(a) The purpose of this subchapter is to establish reporting requirements regarding reinsurance agreements and loss reserves established by insurers that are writing medical malpractice liability insurance in this State.

(b) Except as set forth in this subchapter, this subchapter shall apply to insurers that are writing medical malpractice liability insurance in this State. This subchapter shall not apply to any insurer that has less than \$1,000,000 of direct written premiums in medical malpractice liability insurance on a countrywide basis as of December 31 immediately preceding, or an insurer that has less than \$1,000,000 of direct written premiums in medical malpractice liability insurance in this State as of December 31 immediately preceding and that do not write coverage for physicians or surgeons for the relevant period.

11:27-11.2 Definitions

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

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Department" means the New Jersey Department of Banking and Insurance.

"Insurer" means an entity authorized pursuant to N.J.S.A. 17:17-1 et seq. or admitted pursuant to N.J.S.A. 17:32-1 et seq. that is writing medical malpractice liability insurance in this State.

"NAIC" means the National Association of Insurance Commissioners.

11:27-11.3 Reinsurance agreements

(a) No later than the earlier of 60 days after the effective date of or 30 days after the execution of a new, renewal of or amendment to any ceded reinsurance contract covering medical malpractice liability insurance, whether such agreement covers medical malpractice liability as a single line or in combination with other lines, an insurer shall file with the Department:

1. A copy of the complete ceded reinsurance agreement, including all amendments thereto; and

2. The reinsurance attestation maintained in accordance with the instructions to the NAIC annual statement, required pursuant to N.J.S.A. 17:23-1.

(b) Unless an executed agreement was previously filed pursuant to (a)1 above, the insurer shall also notify the Department within 30 days of executing the reinsurance agreement, which notification shall also, if applicable, set forth any changes to a previously filed agreement with same reinsurer.

(c) The insurer shall also make available for Department inspection and review the underwriting file related to such agreement.

(d) In addition to (a) and (b) above, domestic insurers that are members of a holding company system shall also continue to be subject to the prior notification requirements regarding reinsurance agreements entered into with affiliates set forth in N.J.S.A. 17:27A-4.

(e) An insurer may file the information required by this rule electronically by e-mail, if the file is no larger than 10 megabytes (MB), by filing the information to: medmalreporting@dobi.state.nj.us, or by CD-ROM, if the file is larger than 10 MB.

11:27-11.4 Actuarial reports

(a) An insurer transacting medical malpractice liability insurance shall file with the Department by no later than March 15 of each year a copy of the actuarial opinion summary and, by no later than June 1 of each year, a copy of the actuarial report that are maintained pursuant to the instructions to the NAIC annual statement filed pursuant to N.J.S.A. 17:23-1. The actuarial report shall include the actuarial estimate and/or range for the reserves recommended to be established by the insurer.

(b) Insurers shall file with the actuarial report required pursuant to (a) above a detailed justification supporting the management decision for the level of reserves selected, signed by the chief executive officer and chief financial officer of the insurer. In addition, the written justification shall include a justification for the selection by the management of the insurer of applicable loss sensitive items, which shall include, but not be limited to, the following:

1. Death, disability and retirement (DDR) reserves booked as part of unearned premiums;
2. Other extended reporting endorsement reserves booked as part of unearned premiums;
3. Statutory reserves;
4. Technical reserves;
5. Retroactive reinsurance reserves (assumed and/or ceded);
6. Other reserves reported as write-in lines on Page 3 (Liabilities) on the NAIC annual statement;
7. Accrual/return for direct commissions;
8. Accrual/return for ceded and/or assumed commissions; and
9. Accrual/return for interest on reinsurance funds held.

(c) The loss sensitive items filed pursuant to (b) above shall be addressed if they are related to medical malpractice liability insurance written either solely or in combination with other lines.

(d) An insurer may file the information required by this rule electronically by e-mail, if the file is no larger than 10 megabytes (MB), by filing the information to: medmalreporting@dobi.state.nj.us, or by CD-ROM, if the file is larger than 10 MB.

11:27-11.5 Confidentiality

All of the documents and information filed pursuant to this subchapter shall be confidential and shall not be deemed a public record for purposes of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

11:27-11.6 Penalties

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