

**CHAPTER 27****MEDICAL MALPRACTICE LIABILITY INSURANCE****Authority**

N.J.S.A. 17:1-8.1, 17:1-15e, 17:23-20 et seq., 17:29AA-1 et seq.,  
17:30D-20 (P.L. 2004, c.17, § 15), 17:30D-27,  
17:30D-28 et seq. and 17:32-1 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).

Subchapter 12, Corporate Governance, was adopted as new rules by R.2009 d.101, effective April 6, 2009. See: 40 N.J.R. 1067(a), 41 N.J.R. 1490(a).

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## SUBCHAPTER 1. GENERAL PROVISIONS

**11:27-1.1 Purpose**

The purpose of this chapter is to implement the New Jersey Medical Care Access and Responsibility and Patients First Act, P.L. 2004, c.17 as it applies to insurers authorized to transact medical malpractice liability insurance in this State.

**11:27-1.2 Scope**

This chapter applies to all insurers authorized to transact medical malpractice liability insurance in this State and to the medical malpractice liability insurance policies issued by such authorized insurers, as more specifically set forth in the subchapters that follow.

**11:27-1.3 Separability**

If any provision of this chapter or its application to any person or circumstance is held to be invalid, the remainder of this chapter and its application to other persons or circumstances shall not be affected.

SUBCHAPTER 2. OPTIONAL POLICY PROVISION—  
RIGHT TO CONSENT TO SETTLEMENT**11:27-2.1 Purpose and scope**

(a) The purpose of this subchapter is to provide an option to insureds covered by medical malpractice insurance policies that contain a “consent by the insured to settle” provision to waive that provision by way of endorsement, and to require insurers to provide a premium reduction reflecting any savings or reduced costs if the endorsement providing for a waiver of the “right to consent to settle” provision is selected.

(b) This subchapter shall apply to any medical malpractice insurance policy made, issued or delivered in this State by an authorized insurer on or after December 4, 2004.

**11:27-2.2 Optional policy provision; right to settle**

(a) A medical malpractice liability insurance policy may provide that a person insured under the policy has the exclusive right to require the insurer to obtain the consent of the insured to settle any claim filed against the insured.

(b) If a medical malpractice liability policy made, issued or delivered in this State by an authorized insurer on or after December 4, 2004 contains a provision as described in (a) above, the insurer shall offer an endorsement, to be included in the policy at the option of the insured, providing that the insurer may settle a claim filed under the policy without first having obtained the insured’s consent. The insurer shall establish a premium discount for that endorsement, which shall reflect any savings or reduced costs attributable to the endorsement.

1. With respect to new applications for coverage under policies which include a provision as referenced in (a) above, notice of the offering of the endorsement and corresponding premium discount shall be provided on the application form or in an attachment accompanying the application form.

2. If the offering of the endorsement constitutes a change in the contract terms of a policy being renewed, notice thereof and of the corresponding premium discount shall be provided to the insured in accordance with N.J.A.C. 11:1-20.2(c).

(c) An insurer authorized to transact medical malpractice liability insurance in this State that issues policies which contain the provision referenced in (a) above and offers an endorsement as set forth in (b) above shall file the endorsement with the Department of Banking and Insurance in accordance with N.J.A.C. 11:1-2. Where required by N.J.S.A. 17:29AA-5 and N.J.A.C. 11:1-2, a manual rule pertaining to the premium reduction required when the endorsement is selected shall be filed with the endorsement form filing.

## SUBCHAPTER 3. MANDATORY DEDUCTIBLES

**11:27-3.1 Purpose and scope**

This subchapter sets forth the requirements applicable to deductibles which shall be offered by all authorized medical malpractice liability insurers on medical malpractice liability insurance policies transacted in this State.

**11:27-3.2 Mandated deductible amounts**

(a) All insurers authorized to transact medical malpractice liability insurance in this State shall include in their offered medical malpractice liability insurance policies a range of at least five deductible amounts applicable to indemnity only, with the selection of the deductible to be at the option of the insured. The offered deductibles shall range from at least \$5,000 per claim on all policies regardless of the liability limits and up to \$1,000,000 per claim on policies with liability limits of at least \$1,000,000/\$3,000,000. Any medical malpractice liability insurance policy that contains a provision that includes defense costs within policy limits shall conform to the standards set forth in N.J.A.C. 11:13-7.3(c).

1. Examples of deductibles which may be included in the range of five deductibles to be offered as set forth above are:

\$5,000 per incident, \$15,000 annual aggregate deductible

\$10,000 per incident, \$30,000 annual aggregate deductible

\$25,000 per incident, \$75,000 annual aggregate deductible

\$50,000 per incident, \$150,000 annual aggregate deductible

\$100,000 per incident, \$300,000 annual aggregate deductible

\$150,000 per incident, \$450,000 annual aggregate deductible

\$200,000 per incident, \$600,000 annual aggregate deductible

\$250,000 per incident, \$750,000 annual aggregate deductible

"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.

### 11:27-12.3 Board of directors

Not less than one-third of the directors of an insurer, and not less than one-third of the members of each committee of the board of directors of any insurer, shall be persons who are not officers or employees of that insurer or of any entity controlling, controlled by, or under common control with, that insurer and who are not beneficial owners of a controlling interest in the voting securities of that insurer or any such entity. At least one such person shall be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.

### 11:27-12.4 Independent board member committees

(a) The board of directors of an insurer shall establish one or more independent board member committees. Such committees shall be comprised of at least two members and shall be comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with, the insurer and who are not beneficial owners of a controlling interest in the voting securities of the insurer or any such entity. Such committees shall meet not less than quarterly. Such committees shall be responsible for recommending the selection of independent certified public accountants and reviewing the insurer's financial condition, the scope and results of any independent audit or review, and any internal audit.

1. The requirements imposed by (a) above and by N.J.A.C. 11:27-12.3 shall not apply to an insurer that is a direct subsidiary of an entity that satisfies the requirements set forth therein.

(b) Every insurer shall establish an independent board member committee which shall be directly responsible for the appointment, compensation and oversight of the work of any accountant (including resolution of disagreements between management and the accountant regarding financial reporting) for the purpose of preparing or issuing the audited financial report or related work pursuant to N.J.A.C. 11:2-26. Each accountant shall report directly to the independent board member committee responsible for such oversight.

(c) The board committee referenced in (a) above shall require the accountant that performs for the insurer any audit required by N.J.A.C. 11:2-26 to timely report the results of the audit to the independent committee in accordance with the requirements of "SAS 61, Communication with Audit Committees," or its replacement, including:

1. All significant accounting policies and material permitted practices;
2. All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and
3. Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

### 11:27-12.5 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, the penalties authorized by N.J.S.A. 17:33-2.