

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).

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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

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).