

or renewal on or after January 1, 2004, January 1, 2005, and January 1, 2006, from the amount paid in the immediately preceding calendar year(s); or

2. In the case of practitioners whose medical malpractice liability coverage is supplied by health care providers in the manner set forth in (b) above, the Commissioner determines that the health care provider increased its total professional liability funding obligation in excess of an amount determined by the Commissioner based on a review of the information filed pursuant to N.J.A.C. 11:27-7.4 for one or more of the three year periods set forth in (b)1 above.

(c) Pursuant to N.J.S.A. 17:30D-30, the Commissioner may waive the criteria for eligibility if he or she determines that access to care for a particular specialty or subspecialty is threatened because of an inability of a sufficient number of practitioners in that specialty or subspecialty to practice in a geographic area of the State.

(d) For purposes of determining the qualifying increases incurred by practitioners in the class or classes of specialties or subspecialties set forth in (b) above, the Commissioner shall consider the increases in the base rate for medical malpractice liability insurance for such practitioners imposed by each medical malpractice liability insurer, reciprocal insurance exchange, risk retention group and joint insurance fund providing such coverage in this State and the increase in the self-insured funding obligation of the health care providers referenced in (b) above, and such other information as the Commissioner may conclude is relevant to that determination, including information received in accordance with the procedure set forth in (f) below.

(e) In considering the extent to which access to care is threatened as referenced in (a) and (c) above, the Commissioner shall consider information from relevant studies, reports, practitioners, practitioner trade associations, the Department of Health and Senior Services, the Department's internal analysis, and any other relevant data the Commissioner deems appropriate.

(f) The certification of eligible classes and determination of practitioner and health care provider eligibility shall be made annually as set forth below.

1. The Department shall issue a public notice on or about January 31 of each year setting forth those classes of specialties and subspecialties proposed to be eligible to apply to receive a subsidy from the Fund, the amount available for distribution or projected to be available, and, if applicable, the proposed amounts of the increases in premium and funding obligations referenced, respectively, in (b)1 and 2 above. The public notice shall be disseminated to those interested parties on the Department's distribution list utilized pursuant to N.J.A.C. 1:30-5.2(a)6, and shall also be posted on the Department's website: www.njdoji.org. In addition, the public notice shall be published in the New Jersey Register. The public

notice shall also provide that interested parties shall have 30 days from the date of posting on the Department's website to provide written comments on the Department's determinations.

2. After giving due consideration to any comments received, the Commissioner shall thereafter issue an Order establishing the classes eligible, and, if applicable, the amounts of the qualifying increases and funding obligations to be utilized as set forth in (b)1 and 2 above. The Order shall be disseminated to those interested parties on the Department's distribution list utilized pursuant to N.J.A.C. 1:30-5.2(a)6, and to all persons who submitted written comments on the public notice referenced in (f)1 above, and shall also be posted on the Department's website: www.njdoji.org. In addition, the Order shall be published in the New Jersey Register. The Order shall constitute a final agency decision.

(g) Notwithstanding (a) through (f) above, pursuant to N.J.S.A. 17:30D-30c, a practitioner who has been subject to disciplinary action or civil penalty by the practitioner's respective Board pursuant to N.J.S.A. 45:1-21, 45:1-22 or 45:1-25, when that action or penalty relates to the practitioner's provision of, or failure to provide, treatment or care to a patient, shall not be eligible to receive a subsidy from the Fund.

Public Notice: Medical Malpractice Liability Insurance Premium Assistance Fund—Premium Subsidy.

See: 37 N.J.R. 678(a).

Adopted changes R.2005 d.186, effective June 20, 2005.

See: 36 N.J.R. 5970(a), 37 N.J.R. 2207(a).

In (f)1, substituted "on or about" for "no later than".

11:27-7.6 Application process

(a) Practitioners and healthcare providers deemed eligible to apply for a subsidy from the Fund as provided in N.J.A.C. 11:27-7.5 shall file an application in a form to be prescribed by the Department and posted on the Department's website at www.njdoji.org. The information provided in the application shall include, but not be limited to, the following:

1. Applicant's name, address, daytime telephone number and business address;
2. Applicant's e-mail address;
3. Applicant's type of licensure and license number;
4. Information related to the type of practice; and
5. Information related to the applicant's medical malpractice liability insurer, including insurer name, policy dates and limits of liability.

(b) Applications shall be filed electronically in accordance with the instructions set forth on the application.

(c) Applications shall be filed no later than 30 days after the issuance by the Commissioner of the Order referenced in N.J.A.C. 11:27-7.5(f) specifying the eligible classes of practitioners and healthcare providers and the qualifying increases

in medical malpractice liability insurance premiums and self-funded obligations from the immediately preceding year.

(d) No application shall be accepted if the licensee is required to pay the annual assessment referenced in N.J.A.C. 11:27-7.3 but has not paid the assessment by the due date on the notice.

11:27-7.7 Distribution of funds

(a) The amount of the subsidy to be distributed for a relevant period shall be in the proportion that the qualifying increases in premiums and funding obligations for all eligible classes relate to the total amount of monies collected and allocated for distribution pursuant to N.J.S.A. 17:30D-29e(1), less administrative costs incurred in administering the Fund.

(b) Payments pursuant to (a) above shall be disbursed to each eligible applicant or to the applicant's designee as soon as practicable after the termination of the application period as set forth in N.J.A.C. 11:27-7.6(c).

11:27-7.8 Practice requirement and penalties

(a) Pursuant to N.J.S.A. 17:30D-30d(1), a practitioner who receives a premium subsidy pursuant to N.J.S.A. 17:30D-30 shall thereafter be required to continue to practice at least to the same extent (for example, full-time or part-time, and no restriction in specialty or subspecialty) in that practitioner's specialty or subspecialty in this state for a period of at least two years from the issue date of the subsidy. A practitioner may seek a waiver of the two-year practice continuation requirement by filing a certification with the Commissioner that sets forth the reason(s) the practitioner is or will be unable to fulfill the minimum two-year practice requirement. The Commissioner shall grant the waiver of completion of the minimum two-year practice requirement only for the following reasons:

1. Disabled and therefore unable to practice in the specialty or subspecialty prior to the end of the service period;
2. Death;
3. Extended maternity leave beyond the period of disability;
4. Full-time duty with the armed forces, VISTA or the Peace Corps; or
5. Leave taken in accordance with the New Jersey Family Leave Act, N.J.S.A. 34:11B-1 et seq., or the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 et seq.

(b) In the event it is determined that the practitioner filed a certification which contained false or inaccurate information, the Department shall refer the matter to the appropriate Board for disciplinary action.

(c) If a practitioner who received a premium subsidy fails to satisfy the minimum two-year practice requirement set forth in (a) above, fails to obtain a waiver of such requirement, falsified data on his or her application, or otherwise is found not to have been or continue to be entitled to receive the subsidy, the practitioner shall be required to repay the amount of the subsidy, in whole or in part.

(d) In addition to (c) above, any person who violates the provisions of this subchapter may be subject to the imposition of any other penalties as authorized by law.

SUBCHAPTER 8. OFFICERS, DIRECTORS AND BOARD MEMBERS OF MEDICAL MALPRACTICE INSURERS

11:27-8.1 Prohibition upon concurrently serving in dual capacity

(a) No person who is an officer, director or board member of a professional association for health care providers shall serve concurrently as an officer, director or board member of a State-domiciled medical malpractice liability insurer that is licensed in New Jersey and offering medical malpractice liability insurance policies. For the purposes of this section, a professional association shall not include a professional association formed in accordance with N.J.S.A. 14A:17-1 et seq. and N.J.A.C. 13:35-6.16(f)2.

(b) For the purposes of this section only, a health care provider means an individual or entity which, acting within the scope of its licensure or certification, provides health care services, and includes, but is not limited to, a physician, dentist, nurse or other health care professional whose professional practice is regulated pursuant to Title 45 of the Revised Statutes and a health care facility licensed pursuant to N.J.S.A. 26:2H-1 et seq.

(c) A person or professional association who violates the provisions of this section and/or N.J.S.A. 17:30D-18 shall be liable for a civil penalty of \$10,000 for each violation.

SUBCHAPTER 9. MEDICAL MALPRACTICE LIABILITY INSURANCE PURCHASING ALLIANCES

11:27-9.1 Purpose and scope

(a) This subchapter implements P.L. 2004, c. 17 by establishing rules for the formation and operation of medical malpractice liability insurance purchasing alliances.

(b) This subchapter shall apply to alliances of eligible physicians as defined at N.J.S.A. 45:9-1 et seq.

11:27-9.2 Definitions

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

“Board” means a medical malpractice liability insurance purchasing alliance board of directors as provided for at P.L. 2004, c.17, §14.

“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 any insurer or insurance association authorized to issue medical malpractice liability insurance in this State.

“Medical malpractice liability insurance purchasing alliance,” “purchasing alliance” or “alliance” means a purchasing alliance established pursuant to P.L. 2004, c. 17, §14.

“Member” means a physician or a physician group practice that is a member of a medical malpractice liability insurance purchasing alliance.

11:27-9.3 Filing requirements

(a) Within 30 days of formation, a medical malpractice liability insurance purchasing alliance shall file the following with the Commissioner:

1. A certification by a senior officer or other authorized representative of the purchasing alliance, which shall include:
 - i. The name of the purchasing alliance;
 - ii. The members of the purchasing alliance;
 - iii. The names of the board of directors, chairman, treasurer and secretary of the purchasing alliance;
 - iv. The New Jersey mailing address at which communications for the purchasing alliance are to be received;
 - v. The eligibility requirements for membership in the purchasing alliance; and
 - vi. The fees charged to members of the purchasing alliance;
 - vii. The identity of the insurer who is providing the medical malpractice liability insurance;
 - viii. A description of how coverage will be issued (that is, through individual policies or through a master policy with individual certificates of insurance); and

ix. The procedure and method by which return premium is calculated if a member discontinues coverage prior to policy termination;

2. A copy of the certificate of incorporation, if any, of the purchasing alliance; and

3. A copy of the joint contract executed by all members of the purchasing alliance.

(b) Filings shall be submitted to:

NJ Department of Banking and Insurance
 Surplus Lines Examining Office
 PO Box 325
 Trenton, NJ 08625-0325

(c) A current listing of the membership of the purchasing alliance as required by (a)lii above shall be filed with the Commissioner annually. Any other change in the information specified in (a) above shall be filed with the Commissioner within 30 days of the change.

11:27-9.4 By-laws of the purchasing alliance

The purchasing alliance shall adopt by-laws, which shall comply with the requirements of P.L. 2004, c. 17, §14c, and otherwise comply with the provisions of P.L. 2004, c. 17 and this subchapter.

11:27-9.5 Termination of membership in a purchasing alliance

(a) A physician or physician group practice may discontinue purchasing coverage as a member of a purchasing alliance at any time.

(b) A purchasing alliance may include a requirement in its bylaws or joint contract that members provide no more than 30 days notice of discontinuance to the alliance.

11:27-9.6 Prohibited practices

(a) A purchasing alliance shall not:

1. Assume risk for the cost or provision of medical malpractice liability insurance;
2. Exclude a member who agrees to pay fees for membership and the premium for medical malpractice liability insurance coverage, and who abides by the bylaws of the alliance;
3. Engage in any trade practice or activity prohibited pursuant to N.J.S.A. 17:29B-1 et seq.;
4. Represent more than 35 percent of the physicians in any one county if the population density of the county is greater than 1,000 per square mile based on the latest census data;

5. Where (a)4 above does not apply, represent more than 35 percent of the physicians in any one of the following three regions:

i. Region I, which consists of the following three digit zip codes in New Jersey: 080, 081, 082, 083 and 084;

ii. Region II, which consists of the following three-digit zip codes in New Jersey: 077, 078, 079, 085, 086, 087, 088 and 089; and

iii. Region III, which consists of the following three digit zip codes in New Jersey: 070, 071, 072, 073, 074, 075 and 076; or

6. Require a member to purchase medical malpractice liability insurance only through the alliance.

11:27-9.7 Violations and penalties

Failure to comply with any of the requirements of this subchapter shall be a violation of P.L. 2004, c. 17. The purchasing alliance in violation shall be subject to all penalties provided by applicable law including, but not limited to, an order directing that the purchasing alliance cease and desist from further operations until such time as all violations are abated.