

CHAPTER 18

NEW JERSEY MEDICAL MALPRACTICE REINSURANCE RECOVERY FUND

Authority

N.J.S.A. 17:1-8.1, 17:1C-6 and 17:30D-1 et seq.

Source and Effective Date

R.1995 d.26, effective December 13, 1994.
See: 26 N.J.R. 2195(a), 27 N.J.R. 371(a).

Executive Order No. 66(1978) Expiration Date

Chapter 18, New Jersey Medical Malpractice Reinsurance Recovery Fund, expires on December 13, 1999.

Chapter Historical Note

Chapter 18, New Jersey Medical Malpractice Reinsurance Recovery Fund, was adopted as R.1989 d.613, effective December 19, 1989. See: 21 N.J.R. 2698(a), 21 N.J.R. 3927(a). Pursuant to Executive Order No. 66(1978), Chapter 18 was readopted as R.1995 d.26. See: Source and Effective Date.

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SUBCHAPTER 1. FUND SURCHARGE

11:18-1.1 Purpose

Pursuant to N.J.S.A. 17:30D-9, the New Jersey Medical Malpractice Reinsurance Recovery Fund was created to reimburse the New Jersey Medical Malpractice Reinsurance Association, created pursuant to N.J.S.A. 17:30D-4, for any deficit sustained in the operation of the Association. Pursuant to N.J.S.A. 17:30D-10, the Commissioner is authorized to establish reasonable provisions through additional premium charges for medical malpractice liability insurance policies for the purpose of providing monies necessary to establish the Fund in an amount sufficient to meet the requirements of the Medical Malpractice Liability Insurance Act, N.J.S.A. 17:30D-1 et seq. This subchapter establishes such provisions.

11:18-1.2 Scope

This subchapter applies to all health care providers as defined in this subchapter and to all insurers authorized to write medical malpractice liability insurance in this State.

11:18-1.3 Definitions

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

“Association” means the New Jersey Medical Malpractice Reinsurance Association created pursuant to N.J.S.A. 17:30D-4.

“Commissioner” means the Commissioner of Insurance of the State of New Jersey.

“Fund” means the New Jersey Medical Malpractice Reinsurance Recovery Fund created pursuant to N.J.S.A. 17:30D-9.

“Health care provider” means hospitals, health maintenance organizations, physicians and doctors licensed in this State.

“Medical malpractice liability insurance” means insurance coverage against the legal liability of the insured and against loss, damage or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering professional service by any physician, doctor, hospital or health maintenance organization, or a claim arising out of ownership, operation or maintenance of the physician’s, doctor’s, hospital’s or health maintenance organization’s business premises, including primary and excess coverage.

“Physician” or “doctor” means a doctor of medicine (M.D.), a surgeon, a doctor of osteopathic medicine (D.O.), and a doctor of podiatric medicine (D.P.M.).

“Premium” means the annual medical malpractice liability insurance premium paid by a health care provider and, in the case of physicians or doctors, includes the portion of the medical malpractice liability insurance premium paid for partnership/association coverage.

“Treasurer” means the Treasurer of the State of New Jersey.

11:18-1.4 Imposition of surcharge

(a) A surcharge of five percent is imposed on the total premiums for all policies of medical malpractice liability insurance covering physicians and doctors presently licensed in New Jersey who were insured (primary or excess) or reinsured by the Association from 1976 to 1982, whether currently practicing individually or as a professional associa-

tion or employee thereof, or in affiliation or employment with any hospital or health maintenance organization, and those covering health maintenance organizations which were insured (primary or excess) or reinsured by the Association from 1976 to 1982. Anything aforesaid to the contrary notwithstanding, for policies issued or renewed on or after June 17, 1991 the surcharge shall be two and one-half percent on the total premium of any person subject to surcharge provided in this paragraph who was not insured (primary or excess) or reinsured by the Association for at least three consecutive months.

(b) A surcharge of three and seventy-five hundredths percent is imposed on the total premiums for all policies of medical malpractice liability insurance covering hospitals that were insured (primary or excess) or reinsured by the Association from 1976 to 1982. Anything aforesaid to the contrary notwithstanding, for policies issued or renewed on and after June 17, 1991 the surcharge shall be two and one-half percent of the total premium of any hospital subject to the surcharge provided in this paragraph which was not insured (primary or excess) or reinsured by the Association for at least three consecutive months.

(c) A surcharge of two and one-half percent is imposed on the total premiums for all policies of medical malpractice liability insurance covering physicians, doctors, hospitals and health maintenance organizations presently licensed in New Jersey who were not insured (primary or excess) or reinsured by the Association from 1976 to 1982, or who were insured (primary or excess) or reinsured for a period of less than three consecutive months by the Association from 1976 to 1982.

(d) The applicable surcharge shall apply to all new and renewal policies effective on or after the effective date of this subchapter and to the additional premiums on all endorsements effective on or after the effective date of this subchapter.

(e) The applicable surcharge shall be a separate, up-front charge to the insured in addition to the total premium to be paid, except that in the case of policy premiums paid pursuant to a payment plan or installment plan the applicable surcharge shall be a proportionate charge based upon the payment schedule or amount of payment received. The surcharge shall be shown separately in dollars and cents on each document stating the policy premium. The surcharge shall be identified to the insured as the "Medical Malpractice Reinsurance Recovery Fund Surcharge."

(f) Commissions and premium taxes shall not be payable on the applicable surcharge and the insurer shall be prohibited from absorbing such surcharge as an inducement for insurance or for any other reason.

(g) Failure of the insured to pay the applicable surcharge shall be deemed failure to pay the premium and result in cancellation for nonpayment of premium.

(h) Return of the applicable surcharge collected is permitted on policy activity such as endorsements decreasing premium and cancellations effective on the date this subchapter becomes effective and thereafter. The return surcharge shall be calculated on the same pro rata basis as the return premium. Upon reasonable notice and the provision of adequate documentation from the insurer, the Association shall refund to the policyholder any return of surcharge due that policyholder.

Amended by R.1991 d.304, effective June 7, 1991.

See: 23 N.J.R. 938(a), 23 N.J.R. 1955(a).

Added "Anything aforesaid to the contrary notwithstanding, for policies issued or renewed on or after June 17, 1991 the surcharge shall be two and one half percent on the total premium of any person subject to surcharge provided in this paragraph who was not insured (primary or excess) or reinsured by the Association for at least three consecutive months" in (a) and (b).

Added ", or who were insured (primary or excess) or reinsured for a period of less than three consecutive months by the Association from 1976 to 1982." in (c).

Case Notes

Validity of surcharge on medical malpractice to fund deficit in malpractice reinsurance association. In re New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge, Adopted New Rules, N.J.A.C. 11:18, 246 N.J.Super. 109, 586 A.2d 1317 (A.D.1991), certification denied 126 N.J. 328, 598 A.2d 886.

Recoupment from insureds of assessments to cover deficiency in medical malpractice reinsurance fund. In re New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge, Adopted New Rules, N.J.A.C. 11:18, 246 N.J.Super. 109, 586 A.2d 1317 (A.D.1991), certification denied 126 N.J. 328, 598 A.2d 886.

Surcharge to fund malpractice reinsurance association was properly levied on physicians, podiatrists and hospitals as they were class for whom association was activated. In re New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge, Adopted New Rules, N.J.A.C. 11:18, 246 N.J.Super. 109, 586 A.2d 1317 (A.D.1991), certification denied 126 N.J. 328, 598 A.2d 886.

Term "surcharges" in Medical Malpractice Liability Insurance Act means same thing as "additional premium charges" within meaning of section empowering Commissioner of Insurance to establish reasonable provisions necessary to establish Medical Malpractice Recovery Fund. In re New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge, Adopted New Rules, N.J.A.C. 11:18, 246 N.J.Super. 109, 586 A.2d 1317 (A.D.1991), certification denied 126 N.J. 328, 598 A.2d 886.

Surcharges to fund deficit were properly imposed on persons not insured or reinsured by association. In re New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge, Adopted New Rules, N.J.A.C. 11:18, 246 N.J.Super. 109, 586 A.2d 1317 (A.D.1991), certification denied 126 N.J. 328, 598 A.2d 886.

Physicians privately insured but benefitting from malpractice reinsurance association could constitutionally be assessed surcharge to fund association deficit. In re New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge, Adopted New Rules, N.J.A.C. 11:18, 246 N.J.Super. 109, 586 A.2d 1317 (A.D.1991), certification denied 126 N.J. 328, 598 A.2d 886.

11:18-1.5 Collection and remittance of surcharge

(a) The applicable surcharge billed to the policyholder shall be collected by each insurer at the time of payment of premium.

(b) The insurer shall remit each collected surcharge to the Department for transmittal to the Treasurer for the account of the Fund not later than 10 days from the end of the calendar month in which the surcharge was collected. Insurers shall make checks payable to "State of New Jersey, General Treasury." The Commissioner shall remit the collected surcharge to the Treasurer no later than three days after receipt of the surcharge.

(c) The monies collected and a report in the form set forth in Appendix A, incorporated herein by reference, shall be submitted to:

Fiscal Office
New Jersey Department of Insurance
CN-325
Trenton, New Jersey 08625
Attn: MMRRF Surcharge.

(d) When requesting monies received by the Fund, the Association shall file such request with the Commissioner in the form set forth in Appendix B, incorporated herein by reference. Upon a determination that the information set forth in the form is complete and accurate, the Commissioner shall notify the Treasurer and the Treasurer shall remit the amount requested to the Fund balance, including all accrued interest thereon, to the Association pursuant to N.J.S.A. 17:30D-11.

(e) Not later than March 1 of each year, each insurer shall file with the Commissioner in the form set forth in Appendix C, incorporated herein by reference, the following:

1. A listing of each Fund surcharge collected during the preceding calendar year and to which class of health care provider the surcharge applies;
2. A listing of each Fund surcharge remitted to the Commissioner during the preceding calendar year and to which class of health care provider the surcharge applies;
3. The total amount of Fund surcharges collected during the preceding calendar year;
4. The total amount of Fund surcharges remitted to the Commissioner during the preceding calendar year; and
5. A statement from an officer of the company certifying that the information submitted is accurate and complete to the best of his or her knowledge.

(f) The information required in (e) above shall be submitted to:

Fiscal Office
New Jersey Department of Insurance
CN 325
Trenton, New Jersey 08625
Attention: MMRRF Surcharge

(g) The applicable surcharge shall be billed to the policyholder, collected by the insurer, and remitted to the Treasurer until such time as the Commissioner determines that the monies in the fund are sufficient to meet the requirements of N.J.S.A. 17:30D-1 et seq.

(h) The insurer's obligation to collect the applicable surcharge and remit it to the Treasurer in a timely manner shall be a condition of maintaining its certificate of authority.

Amended by R.1991 d.304, effective June 17, 1991.
See: 23 N.J.R. 938(a), 23 N.J.R. 1955(a).

Added "to the Department for transmittal" and "Insurers shall make checks payable to 'State of New Jersey, General Treasury.' The Commissioner shall remit the collected surcharge to the Treasurer no later than three days after receipt of the surcharge." in (b).

Added (c); redesignated (c), (d) and (e) as (d), (e) and (f); deleted old (f).

Deleted "Not later than April 1 and October 1 of each year," and total amount of monies received by the Fund, plus"; added "When requesting monies received by the Fund, the Association shall file such request with the Commissioner in the form set forth in Appendix B, incorporated herein by reference. Upon a determination that the information set forth in the form is complete and accurate, the Commissioner shall notify the Treasurer and" and "amount requested to the Fund balance, including" in the new (d).

Deleted "and September 1" and "with the Department of Insurance"; added "with the Commissioner in the form set forth in Appendix C" in new (e).

Substituted "calendar year" for "reporting period" in (e)1,2,3,4.

Substituted "Commissioner" for "Treasurer" in (e)2 and 4.

Substituted "Fiscal Office" for "Statistical Service, Property Liability Division" in (f).

11:18-1.6 Adjustment of surcharge

The amount of surcharge imposed by this subchapter may be adjusted by the Commissioner upon his or her consideration of revenues received and Fund expenses. Adjustments shall be made for all classes subject to the surcharge on a proportional basis. Adjustments, if any, shall be made in accordance with the rulemaking procedures of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

11:18-1.7 Penalties

Failure by an insurer to comply with this subchapter may result in the imposition of penalties or sanctions pursuant to N.J.S.A. 17:33-2 or other provisions of law.

New Rule, R.1991 d.304, effective June 17, 1991.
See: 23 N.J.R. 938(a), 23 N.J.R. 1955(a).

APPENDIX A

**MONTHLY STATEMENT ON THE
MEDICAL MALPRACTICE REINSURANCE
RECOVERY FUND
SURCHARGE ON MEDICAL MALPRACTICE
LIABILITY INSURANCE PREMIUMS**

(Note: This statement does not have to be filed if no medical malpractice insurance premiums were collected during the month).

For The Calendar Month Ending _____, 19____

1. Name and address of Insurer
Name _____
Address _____

2. Surcharges Collected During the Month

(Note: "Total Premiums" referred to below is for insurance covering claims arising out of the rendering of professional medical services by physicians, hospitals, and health maintenance organizations (HMO's).)

a. A 5% Surcharge On The Total Premiums of Physicians In New Jersey Who Were Insured (Primary or Excess) or Reinsured By The New Jersey Medical Malpractice Reinsurance Association ("NJMMRA") from 1976 to 1982 (Less Returned Surcharges for Endorsements Decreasing Premiums or Cancellations).

Total Medical Malpractice Liab. Prem. Collected For Mo.	5% Surchg. (.05)	=	Surchgs. On Prems.	-	Returned Surchgs.	=	Amount Remitted Herein	Year-To-Date Total Surcharges Remitted
_____	_____		_____		_____		_____	_____

b. A 3.75% Surcharge On The Total Premiums of Hospitals Which Were Insured (Primary or Excess) or Reinsured By The NJMMRA from 1976 to 1982 (Less Returned Surcharges for Endorsements Decreasing Premiums or Cancellations).

Total Medical Malpractice Liab. Prem. Collected For Mo.	3.75% Surchg. (.0375)	=	Surchg. On Prems.	-	Returned Surchgs.	=	Amount Remitted Herein	Year-To-Date Total Surcharges Remitted
_____	_____		_____		_____		_____	_____

c. A 2.50% Surcharge On the Total Premiums of Physicians, Hospitals and Health Maintenance Organizations Licensed in New Jersey, Which Were Not Insured (Primary or Excess) or Reinsured by the NJMMRA from 1976 to 1982 (Less Returned Surcharges For Endorsements Decreasing Premiums, or Cancellations).

Total Medical Malpractice Liab. Prem. Collected For Mo.	2.50% Surchg. (.025)	=	Surchgs. On Prems.	-	Returned Surchgs.	=	Amount Remitted Herein	Year-To-Date Total Surcharges Remitted
_____	_____		_____		_____		_____	_____

Grand Total Remitted For The Month (Total of a, b, and c) _____

CERTIFICATION

I hereby certify that the above information is accurate and complete. I am fully aware that if any of the above information is willfully false, I am subject to the penalties and/or sanctions Pursuant to N.J.S.A. 17:33-2 and/or other provisions of the law.

Original Signature Of An Officer Of The Company (no stamp or other facsimile signatures will be accepted)

Signature

Print Name

Title

Date _____ Telephone No. _____
(NOTE: ATTACHED SHOULD BE THE "DETAILED MONTHLY STATEMENT OF SURCHARGES COLLECTED" AND THE "DETAILED MONTHLY STATEMENT OF SURCHARGES RETURNED")

