

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-17 et seq. and 17:32-1 et seq.

Source and Effective Date

R.2011 d.005, effective November 30, 2010.
See: 42 N.J.R. 1307(a), 43 N.J.R. 55(a).

Chapter Expiration Date

Chapter 27, Medical Malpractice Liability Insurance, expires on November 30, 2015.

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. 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, was adopted as new rules 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, and 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); and 37 N.J.R. 205(a), 37 N.J.R. 2041(a), respectively.

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).

Subchapter 13, Medical Malpractice Liability Insurers - Biannual Reporting of Rate Modifiers, was adopted as new rules by R.2009 d.177, effective June 1, 2009. See: 40 N.J.R. 6384(a), 41 N.J.R. 2332(a).

Chapter 27, Medical Malpractice Liability Insurance, was readopted as R.2011 d.005, effective November 30, 2010. See: Source and Effective Date.

Subchapter 14, Changes to Medical Malpractice Liability Insurance Rates, was adopted as new rules by R.2011 d.070, effective February 22, 2011. See: 42 N.J.R. 1473(a), 43 N.J.R. 432(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.