

CHAPTER 27

MEDICAL MALPRACTICE LIABILITY INSURANCE

Authority

N.J.S.A. 17:1-8.1, 17:1-15e, 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.

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SUBCHAPTERS 1 THROUGH 4. (RESERVED)

SUBCHAPTER 5. PROHIBITED PREMIUM INCREASE

11:27-5.1 Purpose and scope

(a) The purpose of this subchapter is to prohibit increases in premiums for New Jersey medical malpractice insurance policy renewals based upon claims filed against insureds where the insured is dismissed from a civil action based upon that claim at an early stage of the civil proceeding.

(b) This subchapter shall apply to any New Jersey medical malpractice insurance policy renewal issued by an insurer authorized to transact medical malpractice liability insurance in this State.

11:27-5.2 Definitions

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

“Action” means a civil action commenced in a court of any State or a Federal court.

“Responsive pleading” means any pleading other than a complaint recognized by the rules governing a civil action alleging medical malpractice commenced in any state or by the Federal Rules of Civil Procedure, as applicable, wherein statements in the nature of answers or replies to allegations made against the party filing the pleading are contained.

11:27-5.3 Prohibited premium increase

(a) An insurer authorized to transact medical malpractice liability insurance in this State shall not increase the premium of any medical malpractice liability insurance policy upon the renewal of that policy on the basis of a claim of medical negligence or malpractice against the insured if the insured is dismissed from a lawsuit alleging medical negligence or malpractice based upon that claim, with no indemnity payment by the insurer, prior to or within 180 days after the filing of the last responsive pleading in the action.

(b) An insurer authorized as set forth in (a) above may increase the premium of any medical malpractice liability insurance policy upon renewal on the basis of a claim of medical negligence or malpractice against the insured which is pending at the time of renewal. In the event, however, that a lawsuit based upon that claim is subsequently dismissed as to the insured during the term of the renewed policy or a subsequent renewal and within 180 days after the filing of the last responsive pleading in the action, with no indemnity payment by the insurer attributable to that claim, the insurer shall, upon the renewal next succeeding such a dismissal, reflect the elimination of this claim in the calculation of the renewal premium.

(c) Where required by N.J.S.A. 17:29AA-5 and N.J.A.C. 11:1-2, an insurer authorized to transact medical malpractice liability insurance in this State shall file a manual rule as to this provision with the Department of Banking and Insurance for inclusion in the company's manual.

SUBCHAPTER 6. RENEWAL AND NONRENEWAL NOTICES

11:27-6.1 Renewal and nonrenewal notices

Medical malpractice liability insurers shall comply with N.J.A.C. 11:1-20 with regard to notices of renewal and nonrenewal of medical malpractice liability insurance policies.

SUBCHAPTER 7. MEDICAL MALPRACTICE LIABILITY INSURANCE PREMIUM ASSISTANCE FUND—PREMIUM SUBSIDY

11:27-7.1 Purpose and scope

(a) The purpose of this subchapter is to set forth procedures for the assessment of certain practitioners and employers for the Fund, and the procedures and methodology for determining eligibility for, making application for, and determining the amount of disbursements from the Fund of medical malpractice liability insurance premium subsidies pursuant to N.J.S.A. 17:30D-28 through 17:30D-30.

(b) This subchapter shall apply with respect to assessments of certain practitioners and employers for the Fund pursuant to N.J.S.A. 17:30D-29, and to any person seeking a disbursement from the Fund of a premium subsidy pursuant to N.J.S.A. 17:30D-28 through 17:30D-30.

11:27-7.2 Definitions

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

“Board” or “Boards” means the New Jersey State Board of Medical Examiners, New Jersey State Board of Chiropractic Examiners, New Jersey State Board of Dentistry, and New Jersey State Board of Optometrists.

“Bona fide office” means a practice location at which a licensee engages in any activity or provides any service for which possession of a license is statutorily required or otherwise mandated by virtue of the job description, specification or qualifications. A “bona fide office” shall include a private practice setting, at a hospital, educational institution, research facility, governmental agency or a business. The accessibility of a licensee at the practice location to members of the public in person or by telephone shall not be a determinative factor.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Completely retired” means a licensure status established by a licensee’s affirmative election of an inactive status at renewal pursuant to N.J.S.A. 45:1-7.3, or through a submission of other written notice, where authorized by the professional practice act to obtain a certificate of retirement. During the time that a licensee is “completely retired,” no practice of the profession, within the meaning of this definition, is authorized, including, but not limited to, the prescribing of medications, if authorized within the scope of practice. Physicians, 65 years or older, without hospital or health maintenance organization affiliation, holding a reduced fee license, issued pursuant to N.J.S.A. 45:9-19.16, shall be deemed active licensees and shall not be deemed “completely retired.”

“Department” means the New Jersey Department of Banking and Insurance.

“Fund” means the Medical Malpractice Liability Insurance Premium Assistance Fund established pursuant to N.J.S.A. 17:30D-29.

“Health care provider” is as defined at N.J.S.A. 17:30D-28.

“Joint insurance fund” means a fund formed by two or more entities to provide liability insurance coverage pursuant to N.J.S.A. 17:49A-1 et seq., 18A:18B-1 et seq., 18A:18B-25.33 et seq., or 40A:10-36 et seq.

“Licensee” means an individual licensed by a Board.

“Practitioner” is as defined at N.J.S.A. 17:30D-28.

“Qualifying increase” means an increase in medical malpractice liability insurance premiums paid by a practitioner or the self-insured funding obligation of a health care provider eligible to receive a subsidy from the Fund determined by the Commissioner pursuant to N.J.A.C. 11:27-7.5.

“Risk retention group” is as defined at N.J.S.A. 17:47A-2.