

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.

Subchapter 9, Medical Malpractice Liability Insurance Purchasing Alliances, was adopted as R.2005 d.268, effective August 15, 2005. See: 37 N.J.R. 1673(a), 37 N.J.R. 3043(b).

Subchapter 2, Optional Policy Provision—Right to Consent to Settlement, was adopted as new rules by R.2005 d.243, effective July 18, 2005 (operative October 18, 2005). See: 36 N.J.R. 4873(b), 37 N.J.R. 2694(a).

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).

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SUBCHAPTER 1. GENERAL PROVISIONS

Authority

N.J.S.A. 17:1-8.1, 17:1-15e and 17:30D-20 (P.L. 2004, c.17, § 15).

Source and Effective Date

R.2005 d.243, effective July 18, 2005.
See: 36 N.J.R. 4873(b), 37 N.J.R. 2694(a).

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

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.