

1. The company's base rates (based on \$1 million/\$3 million limits). The rates should be provided for each rating tier (for example, preferred, standard, etc.), each policy form (occurrence, claims-made), and by each specialty and subspecialty;

2. The company's in-force exposures, by policy form, by rating tier, and by specialty and subspecialty, for all limits combined;

3. The company's average written premiums, including all factors, surcharges, discounts, etc., per exposure by policy form, by rating tier, by specialty and subspecialty; and

4. Such other data from an insurer or other entity as the Commissioner may conclude is necessary in order to determine the class or classes of specialties or subspecialties which will be eligible for a subsidy and the amount of any qualifying premium and professional liability funding obligation increase or increases as referenced in N.J.A.C. 11:27-7.5(a) and (b).

(b) For purposes of complying with the data request, the following instructions shall apply. For base rates, the claims-made rates are for mature claims-made only. For claims-made exposures and average premiums, companies should show the exposures and average premiums for all claims-made steps combined. For all base rates, exposures, and average premiums, companies should provide the specialties and subspecialties by name, company class code, and Insurance Services Office (ISO) class code.

(c) The requested information should be provided electronically on Excel spreadsheets in a form provided by the Department and available on the Department's website at www.state.nj.us/dobi/data/njmedmal_survey.xls no later than 30 days after the Department's request for the data or the end of the relevant reporting period, whichever is later, and sent to MMLIPA@dobi.state.nj.us.

11:27-7.5 Determination of eligibility

(a) The Commissioner shall determine the class or classes of practitioners eligible for the subsidy, by specialty or subspecialty, for each type of practitioner whose average medical malpractice liability insurance premium, as a class, on or after December 31, 2002, is in excess of an amount determined by the Commissioner based upon a review of the information filed pursuant to N.J.A.C. 11:27-7.4 and in accordance with N.J.S.A. 17:30D-30. In determining the relevant premium amounts, the Commissioner shall review and consider, without limitation, the premiums paid or charged by insurers transacting business in this State for medical malpractice liability insurance in this State. In certifying the class or classes of practitioners eligible to receive the subsidy, the Commissioner may, in consultation with the Commissioner of the Department of Health and Senior Services, also consider whether access to care is threatened by the inability of a significant number of practitioners in a

particular specialty or subspecialty to continue practicing in a geographic area of the State.

(b) Practitioners in a class certified by the Commissioner in accordance with (a) above, including those whose medical malpractice liability insurance coverage is supplied by health care providers who provide professional liability insurance through self-insured hospital funding supplemented with purchased commercial insurance coverage, shall be eligible for a subsidy if:

1. The practitioner received an increase in medical malpractice liability insurance premiums 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 following: upon policy inception 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 no later than 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.njdobi.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.njdobi.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.

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.njdobi.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.