

Case Notes

When Medical Malpractice Reinsurance Association makes assessment against insurers, insurers are entitled to recoup that assessment through surcharges on insureds. 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.

Statutory workers' compensation lien for benefits paid to injured employee by workers' compensation insurer was not enforceable against Property-Liability Insurance Guaranty Association. *Sussman v. Ostroff*, 232 N.J.Super. 306, 556 A.2d 1301 (A.D.1989), certification denied 117 N.J. 143, 564 A.2d 865.

Surplus lines insurers held excluded from operation of Property-Liability Insurance Guaranty Association Act, even prior to statutory amendment specifically excluding them from Act. *Railroad Roofing & Building Supply Co., Inc. v. Financial Fire & Casualty Co.*, 85 N.J. 384, 427 A.2d 66 (1981).

11:1-6.2 Definitions

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

"Association" means the New Jersey Property-Liability Insurance Guaranty Association established pursuant to N.J.S.A. 17:30A-1 et seq.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Department" means the New Jersey Department of Insurance.

"Member insurer" is as defined in N.J.S.A. 17:30A-5f.

11:1-6.3 Establishment of Association assessment premium surcharge

(a) Upon a determination by the Commissioner that a surcharge on premiums is necessary to permit member insurers to recoup assessments paid to the Association pursuant to N.J.S.A. 17:30A-8a(3), he or she shall order within 30 days of the due date of an assessment that a surcharge be imposed on net direct written premiums for policies to which N.J.S.A. 17:30A-1 et seq. applies. The essential terms of the Order shall be published in the New Jersey Register.

(b) The amount of a surcharge shall be established by the Commissioner by Order. In determining the amount of a surcharge the Commissioner shall consider:

1. The amount of any assessment on member insurers imposed by the Association pursuant to N.J.S.A. 17:30A-8a(3);

2. The surcharge amount necessary in the Commissioner's opinion to permit member insurers to recoup any assessment paid to the Association pursuant to N.J.S.A. 17:30A-8a(3) over a reasonable time which shall not be less than one year; and

3. The net direct written premiums for all lines of insurance to which N.J.S.A. 17:30A-1 et seq. applies.

(c) A surcharge imposed pursuant to this subchapter shall apply to all policies for all kinds of insurance, except life insurance, accident and health insurance, workers' compensation insurance, title insurance, annuities, surety bonds, credit insurance, mortgage guaranty insurance, municipal bond coverage, fidelity insurance, investment return assurance, ocean marine insurance and pet health insurance.

(d) A surcharge imposed pursuant to this subchapter and by applicable Orders of the Commissioner shall be identified to the insured as "New Jersey Property-Liability Insurance Guaranty Association Surcharge" and the amount of the surcharge shall be shown as a separate item on the premium bill rounded to the nearest dollar. The surcharge amount shall not be treated as premium for accounting purposes or for commissions, but must be coded and reported in accordance with instructions issued by the statistical agents under the direction of the Commissioner.

(e) Any change in premium by endorsement subsequent to the effective date of the policy shall reflect the appropriate change in the surcharge. In the case of flat cancellations, the entire surcharge amount shall be returned to the policyholder.

(f) All assessments imposed on member insurers by the Association pursuant to N.J.S.A. 17:30A-8a(3) shall be considered a receivable by the insurer for accounting purposes. The receivable shall also be considered an admitted asset for statutory accounting purposes. Any surcharges on policies as established by this subchapter shall be considered an offset to the receivable by the insurer for accounting purposes. If an insurer ceases to write all lines of business to which N.J.S.A. 17:30A-1 et seq. applies for any reason, the receivable shall be cancelled to the extent it has not been offset by any surcharges collected and the assessment shall be treated as an expense by the insurer for accounting purposes.

(g) Surcharges on premiums for multi-year policies, including perpetual insurance policies, shall be billed annually pursuant to the procedures established by this subchapter and applicable Orders of the Commissioner.

(h) Surcharges collected by an insurer pursuant to this subchapter are not taxable premiums for the purposes of determining the insurer's tax liability pursuant to N.J.S.A. 54:18A-1 et seq.

(i) An insurer shall not be required to collect a surcharge if the expense of collecting the surcharge exceeds the amount of the surcharge.

(j) A surcharge established pursuant to this subchapter shall provide recoupment to insurers for any assessment imposed pursuant to N.J.S.A. 17:30A-8(3). Such assess-

ments shall not be considered obligations within the context of the retaliatory provisions set forth in N.J.S.A. 17:32-15.

(k) Upon a finding by the Commissioner that the surcharge is no longer necessary to permit member insurers to recoup assessments paid to the Association pursuant to N.J.S.A. 17:30A-8(3), he or she shall order that imposition of the surcharge be terminated. Upon termination of the surcharge, any debit or credit balance shown on that year's reconciliation form shall remain on the insurer's books to be applied in the annual reconciliation form filed the following year and each year thereafter.

Public Notice: Imposition of surcharge.
See: 29 N.J.R. 265(a).
Public Notice: Imposition of surcharge.
See: 30 N.J.R. 244(b).

11:1-6.4 Reporting requirements

All insurers collecting a surcharge established pursuant to this subchapter shall file by March 1 of each year a reconciliation form on a form to be provided by the Commissioner. The form shall show the assessments paid to the Association and the surcharges collected by the insurer, if any, during the calendar year immediately preceding. This information shall be forwarded to:

New Jersey Department of Insurance
Division of Financial Examinations
20 West State Street
CN 325
Trenton, NJ 08625

Amended by R.1996 d.116, effective March 4, 1996.
See: 27 N.J.R. 4121(a), 28 N.J.R. 1382(a).

11:1-6.5 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as authorized by law, including, but not limited to, penalties set forth in N.J.S.A. 17:33-2.

SUBCHAPTER 7. MEDICAL MALPRACTICE REPORTING REQUIREMENTS

Subchapter Historical Note

Petition for Rulemaking: Notice of Receipt of and Action on a Petition for Rulemaking. See: 29 N.J.R. 707(c), 29 N.J.R. 948(b).

11:1-7.1 Purpose and scope

(a) The purpose of these rules is to implement N.J.S.A. 17:30D-17(a) and (b). These statutory provisions require insurers, insurance associations and licensed medical practitioners to notify the Medical Practitioner Review Panel of any medical malpractice claim settlements, judgments or arbitration awards involving a licensed practitioner, any termination or denial of malpractice insurance coverage to a practitioner, or any surcharge assessed against a practitioner. These proposed rules establish the form and content of the notice required under these statutory provisions.

(b) These rules apply to all insurers or insurance associations authorized to issue medical malpractice liability insurance in New Jersey, and to all practitioners licensed by the State Board of Medical Examiners.

11:1-7.2 Definitions

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

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

“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 services by any licensed medical practitioner or health care facility or a claim arising out of ownership, operation or maintenance of the practitioner's or facility's business premises, including primary and excess coverages.

“Medical Practitioner Review Panel” or “Panel” means the panel established pursuant to N.J.S.A. 45:9-19.8.

“Practitioner” means any person licensed to practice medicine and surgery under N.J.S.A. 45:9-1 et seq., podiatry under N.J.S.A. 45:5-1 et seq., or a medical resident or intern.

“State Board of Medical Examiners” means the board established pursuant to N.J.S.A. 45:9-1.

11:1-7.3 Medical malpractice reporting requirements

(a) Any insurer or insurance association authorized to issue medical malpractice liability insurance in the State shall notify the Medical Practitioner Review Panel in writing of the following:

1. Any medical malpractice claim settlement, judgment or arbitration award involving any practitioner licensed by the State Board of Medical Examiners and insured by an insurer or insurance association;
2. Any termination or denial of medical malpractice liability coverage to a practitioner; and
3. Any surcharge assessed against a practitioner because of the practitioner's practice method or medical malpractice claims history.

(b) Any practitioner licensed by the State Board of Medical Examiners who is not covered by a policy of medical malpractice liability insurance issued in this State, or has coverage through a self-insured health care facility or health maintenance organization, or has medical malpractice liability insurance which has been issued by an insurer or insurance association from outside the State, shall notify the Panel in writing of any medical malpractice claim settlement, judgment or arbitration award to which the practitioner is a party.

(c) The initial written notice referred to in (a) and (b) above may be either in letter form or the malpractice report form of the National Practitioner Data Bank and shall contain at least the following information:

1. The name and address of the insurer, insurance association or practitioner submitting the information;
2. The name and address and any other information relating to the identity of the practitioner about whom the information is being submitted; and
3. In the case of a claim settlement, judgment or arbitration award, the name, address and other information relevant to the identity of the claimant making the medical malpractice liability claim against the practitioner, as well as the amount and relevant details of the claim settlement, judgment or arbitration award.

(d) The initial written notice referred to in (a) and (b) above shall be mailed by regular mail or delivered no later than seven days after the settlement, judgment or arbitration award is officially agreed to or entered, the notice of termination or denial of coverage is issued to the practitioner, or notice of the surcharge has been issued to the practitioner.

(e) In addition to the information provided in the initial written notice referred to in this section, the Panel may

request in writing such supplemental relevant information as it determines to be necessary, which shall be received by the Panel no later than 30 days following the date of the Panel's written request.

11:1-7.4 Confidentiality

All information or documentation submitted to the Panel pursuant to this subchapter is confidential, except for release to a government agency under certain circumstances and conditions as set forth at N.J.S.A. 45:9-19.3 and 19.10.

11:1-7.5 Penalties

(a) Any insurer, insurance association or practitioner failing to notify the Medical Malpractice Review Panel pursuant to the requirements of this subchapter shall be subject to such penalties as the Commissioner may determine in accordance with N.J.S.A. 17:30D-12. Additionally, the Commissioner may assess a fine not to exceed \$1,000 for the first violation and \$2,000 for the second and each subsequent violation, which may be recovered in a summary proceeding pursuant to N.J.S.A. 2A:58-1 et seq.

(b) Any practitioner failing to notify the Medical Practitioner Review Panel pursuant to the requirements of this subchapter shall be subject to disciplinary action and civil penalties in accordance with N.J.S.A. 45:1-21, 22 and 25.