

**INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE**

Medical Malpractice Insurance – Premium Payment Installments

Proposed New Rule: N.J.A.C. 11:27-4

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17:30D-31 (P.L. 2004, c.17,§ 32)

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2004-421

Submit comments by December 31, 2004 to:

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The agency proposal follows:

Summary

The New Jersey Medical Care Access and Responsibility and Patients First Act, P.L. 2004 c. 17, (the Act), approved June 7, 2004, was the Legislature's response to a medical malpractice liability insurance crisis in this State. The crisis created an affordability problem for physicians who indicated that escalating premiums directly caused some of them to leave New Jersey to practice elsewhere, scale back their practices or retire from the practice of medicine altogether. The Act was designed to address this affordability problem by reforming three

primary components of the medical malpractice system: comprehensive tort reform; changes to New Jersey's health care system; and tightening the regulation of medical malpractice insurers. Section 22 of the Act requires every insurer authorized to transact medical malpractice liability insurance in this State to offer its insureds the option to make premium payments in installments, as prescribed by the Commissioner of Banking and Insurance by regulation. The Department is proposing these new rules to implement that section of the Act.

N.J.A.C. 11:27-4.1 sets forth the standards for the acceptance of premium payments in installments for medical malpractice liability insurance.

Subsection (a) provides that every insurer authorized to transact medical malpractice liability insurance in this State shall provide and file manual rules for an installment premium payment option which shall include: the minimum initial deposit required, which shall be no more than 50 percent of the estimated total premium; the schedule for the payment of premiums on an installment basis, which shall provide for intervals of at least two months; and no interest charges. The rule provides that the manual rules shall provide that insurers may charge the lesser of one percent of the total premium or \$25.00 per installment as an installment charge and shall include a payment plan as listed in subsection (b). Subsection (a) also allows the continuation of payment plans already in existence that have terms no less favorable than those listed in subsection (b).

Subsection (b) sets forth two installment payment plans that every insurer authorized to transact medical malpractice liability insurance in this State shall provide to their insured professionals. The first plan is to be provided for annual premiums up to and including \$80,000. The plan allows for three installments payable as follows: an initial payment equal to 50 percent

of the premium; a second payment equal to 25 percent of the premium; and a third payment equal to 25 percent of the premium.

The second installment payment plan is for annual premiums in excess of \$80,000. The plan consists of installment payments payable as follows: an initial payment of 30 percent of the premium; a second payment equal to 25 percent of the premium; a third payment equal to 20 percent of the premium; a fourth payment equal to 15 percent of the premium; and a final payment equal to 10 percent of the premium.

Subsection (c) provides the process by which additional premiums resulting from changes to the policy shall be spread over the remaining installments, if any, or billed immediately as a separate transaction.

Subsection (d) provides that insureds shall have the option of paying the premium in full at any time with no additional fees.

Subsection (e) provides that, should an insured fail to pay an installment, the policy may be cancelled in accordance with N.J.A.C. 11:1-20.2(e).

In recognition of the fact that the prohibition upon charging interest on installment payments will require some current New Jersey medical malpractice insurers to modify their internal systems, the Department intends to delay the operative date of then notice of adoption of these rules for a period of 120 days subsequent to the effective date of the adoption.

A 60-day comment period is provided on this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The Department believes that New Jersey citizens, malpractice insurance carriers and health care providers and practitioners will be positively affected by the ability to utilize installment payments to pay medical malpractice liability insurance premiums. This rule provides another tool that can afford relief to those health care providers and practitioners who have experienced difficulty paying their total malpractice insurance premium in one payment. Some of those practitioners have said that this difficulty could result in their ceasing to practice in this State. Providing such insureds with an installment payment option is one way to help to retain these professionals in this State.

Economic Impact

The Department believes that the proposed rule will have no significant economic effect on medical malpractice liability insurers. The insurers should be able to recoup any additional expenses caused by the prolonged billing cycle through the additional fees charged. There should be a positive economic impact on the health care providers and practitioners who avail themselves of the installment payment option, as they will be able to spread the cost of their malpractice insurance coverage over time, with no interest charges incurred.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rule is not subject to any Federal requirements or standards.

Jobs Impact

To the extent that the Act provides options which, if exercised by policyholders, can reduce medical malpractice liability insurance rates, the number of practitioners choosing to retire, leave New Jersey or scale back their practices should decrease. Thus, this and the other rules implementing that Act should have a positive jobs impact on the medical community.

The Department invites commenters to submit data or studies concerning the job impact of the proposed rule together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the proposed new rule.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is required because a small number of admitted medical malpractice liability insurers may employ fewer than 100 full-time employees and would therefore, be “small businesses” as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The new rule contains no reporting or compliance requirements for the medical professionals. The new compliance requirement will effect medical malpractice liability insurers regardless of size. See the Summary above for a discussion of the compliance requirements and the Economic Impact above for a discussion on the costs of these requirements.

The proposed new rule provides no different compliance requirements specifically based on business size. Businesses of all sizes should be able to comply without the need for additional professional services. Providing different compliance requirements based on business size

would thwart the intent of the Legislature as expressed in the Act, which was to increase the affordability of medical malpractice liability insurance for medical professionals. Therefore, the proposed new rule provides no differentiation in compliance requirements based on business size. As was mentioned in the Summary, the Department intends to delay the operative date of the adoption of these rules to afford insurers who will need to modify existing systems adequate time to make any necessary modifications.

The Department believes that any additional recordkeeping and billing attributable to the installments will be handled by existing staff. It is also anticipated that the manual filing of rules by medical malpractice liability insurers will be completed by existing staff, and no professional services or additional staff will be necessary.

Smart Growth Impact

The proposed new rule has no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rule follows:

CHAPTER 27

MEDICAL MALPRACTICE LIABILITY INSURANCE

SUBCHAPTER 4. PREMIUM PAYMENT INSTALLMENTS

11:27-4.1 Minimum standards for optional installment premium payments

(a) Every insurer authorized to transact medical malpractice liability insurance in this State shall offer its insureds an installment premium payment option on such policies, and shall file manual rules which shall include:

1. A minimum initial deposit required, which shall be no more than 50 percent of the estimated total premium;
2. A schedule for the payment of premiums on an installment basis which shall provide for intervals of at least two months;
3. No interest charges;
4. An installment charge of the lesser of one percent of the total premium or \$25.00 per installment; and
5. A payment plan as listed in (b) below; or a payment plan already in existence with terms no less favorable than those in (b) below.

(b) Every insurer authorized to transact medical malpractice liability insurance in this State shall offer the following installment premium payment plans:

1. For annual premiums up to and including \$80,000, a three-installment payment plan payable as follows:
 - i. An initial payment equal to 50 percent of the premium;
 - ii. A second payment equal to 25 percent of the premium; and
 - iii. A third payment equal to 25 percent of the premium.
2. For annual premiums in excess of \$80,000, a five-installment payment plan payable as follows:
 - i. An initial payment of 30 percent of the premium;
 - ii. A second payment equal to 25 percent of the premium;

- iii. A third payment equal to 20 percent of the premium;
- iv. A fourth payment equal to 15 percent of the premium; and
- v. A final payment equal to 10 percent of the premium.

(c) Additional premium resulting from changes to the policy shall be spread over the remaining installments, if any. If there are no remaining installments, additional premium resulting from changes to the policy shall be billed immediately as a separate transaction.

(d) Insureds shall have the option of paying the premium in full at any time without incurring additional fees.

(e) In the event that an insured fails to pay an installment, a policy may be cancelled for non-payment of premium in accordance with the provisions of N.J.A.C. 11:1-20.2(e).

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