

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

Medical Malpractice Insurance-Premium Payment Installments

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

Proposed: November 1, 2004 at 36 N.J.R. 4876(a)

Adopted: May 17, 2005 by Donald Bryan, Acting Commissioner, Department of Banking and Insurance

Filed: May 17, 2005 as R. 2005 d. 188, without change.

Authority: N.J.S.A. 17:1-8.1 and 15e and 17:30D-31

Effective Date: June 20 , 2005

Operative Date: October 18, 2005

Expiration Date: June 6, 2010

Summary of Public Comments and Agency Responses:

Timely comments were received from the New Jersey State Society of Anesthesiologists, The Medical Society of New Jersey, Princeton Insurance Company and Pringle Quinn Anzano, P.C. on behalf of ProSelect Insurance Company.

COMMENT: Several commenters expressed approval for the proposed regulation.

RESPONSE: The Department thanks the commenters for their support

COMMENT: One commenter appreciated the "flexibility" of the proposed rule in that the proposal permits insurers to use payment plans already in existence but requested that the "flexibility" also apply to all items in proposed N.J.A.C. 11:27-4.1(a)

which would enable insurers to provide terms even more favorable to insureds than those outlined in the proposed regulations.

RESPONSE: The regulation refers to "minimum standards." Insurers may provide terms more favorable to the insureds as long as the required minimum standards are met.

COMMENT: One commenter stated that the initial premium payment of 50 percent for total premium payments up to \$80,000 appeared high in contrast to the premium schedule for total premiums over \$80,000. The commenter suggested reducing the initial premium payment percentage for total premium payments under \$80,000 to 25 percent.

RESPONSE: The Department disagrees with the commenter. While insurers are allowed to provide more favorable terms to the insured, the Department believes that it unreasonable to require insurers to accept initial payments that are less than the subsequent payments. The initial payment is higher because policy expenses are front-loaded, and policy equity is being established.

COMMENT: Several commenters requested that the rules implementing the installment plans be delayed for 120 days or longer subsequent to adoption in order to give companies time to change their systems.

RESPONSE: The Department disagrees with the commenters requesting longer than a 120-day delay in the operative date of the rule. Installment payments for medical malpractice insurance were first mandated over two years ago on June 27, 2002 in

Order A02-124. Moreover, N.J.S.A. 17:30D-26, which was enacted June 7, 2004, was effective 180 days after its enactment, or December 4, 2004. Therefore, the Department believes that there has been adequate notice and time for insurers to change their systems and that a delay of 120 days in the operative date of the rule is sufficient.

COMMENT: One commenter disagreed with the Department's statement that additional recordkeeping and billing attributable to the installments would be handled by existing staff. The commenter stated that the implementation of the installment plan would increase the amount of payments deposited and posted three fold and that the implementation of installment fees would create a need to post two entries per check rather than one. The commenter estimated that at least two additional full time persons would be required to post the payments. The commenter further estimated that at least two additional full time persons would be needed for collection and customer service to do such tasks as verification and mailing of late notices, and to handle phone calls, emails and faxes concerning past due payments and payment applications. In order to compensate for this increased expense the commenter asked that the minimum annual premium for installments be established at \$10,000 or, in the alternative, the installment eligibility levels should be set at either \$5,000 or \$2,000.

In addition, one commenter stated that out of the company's 16,000 current policies, over 12,000 have annual premiums less than \$1,000. Therefore N.J.A.C. 11:27-4.1, which provides that insurers may charge the lesser of one

percent of the total premium or \$25.00 per installment as an installment charge, would result in additional costs for printing, postage and lockbox banking fees that far exceed the installment fees charged. The commenter suggested implementing a flat fee per installment, such as \$25.00 per installment, to more accurately reflect the actual unavoidable costs incurred to implement an installment plan.

RESPONSE: The Department thanks the first commenter for its assessment of the additional staff that would be needed to implement the regulation as written. Further, the Department agrees with both commenters that, as written, the regulation does not allow recoupment of the additional costs. A revision such as the one proposed would, however, be a substantive change requiring reproposal and an additional comment period and, therefore, cannot be made on adoption. The Department will propose amendments to these rules in the future to address the issues raised by the comments.

COMMENT: One commenter stated that the proposal failed to address the problem of health care providers who may continually fail to make their payments on a timely basis, causing a drain of the insurer and causing those who make timely payments to share the increased costs incurred through subsequent rate filings. The commenter suggested a "timely payment rule" stating that if a health care provider fails to make three of their installments on a timely basis so as to receive a late notice, the policy holder is then required to forego the installment plan and

to pay the premium in full. In the alternative, the commenter suggested that a late fee of \$25.00 per incident be imposed if a policyholder receives a late notice.

RESPONSE: The Department does not believe that there is a need to impose any specific standards concerning fees for late payments of installments. The Department believes that insurers' current policies on late fees and the option to cancel for nonpayment as delineated in N.J.A.C. 11:27-4.1(e) should provide adequate protection and recompense to the insurer.

COMMENT: One commenter stated that the proposal failed to take into consideration the lost investment income that will occur because of installment payments. The commenter stated that such lost income has not been factored into the current rate structure. In addition, the company's current contracts with reinsurers are on a written premium basis, so the company will be advancing ceded premium to reinsurers that it has yet to collect.

RESPONSE: The proposal does not seek to impose any specific standards concerning the rates for the malpractice premiums. Insurers may factor offsets into the rates. However, as with all such rates, they must be filed with the Department and must not be excessive, inadequate or unfairly discriminatory. (see N.J.S.A. 17:29AA-10.)

COMMENT: One commenter stated that the proposal will cause additional costs relating to agent/broker commissions to be incurred by the company. The commenter believes that the installment payments received will in some cases necessitate the

printing and mailing of additional commission statements and commission checks to agent/brokers.

RESPONSE: As stated above, insurers may factor offsets into the rates. However, as with all such rates, they must be filed with the Department and must not be excessive, inadequate or unfairly discriminatory. (see N.J.S.A. 17:29AA-10.)

Federal Standards Statement

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

Full text of the adoption follows:

SUBCHAPTERS 1 AND 2 (RESERVED)

SUBCHAPTER 4 (No change from proposal.)

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