

## PUBLIC NOTICE

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF INSURANCE

### Medical Malpractice Liability Insurance Premium Assistance Fund – Premium Subsidy

The Department of Banking and Insurance (“Department”) is issuing this public notice as required by N.J.S.A. 17:30D-28 et seq. and N.J.A.C. 11:27-7 regarding the determination of eligibility for a premium subsidy from the Medical Malpractice Liability Insurance Premium Assistance Fund (the “Fund”) in accordance with N.J.S.A. 17:30D-30a(2) and N.J.A.C. 11:27-7.5.

The New Jersey Medical Care Access and Responsibility and Patients First Act, P.L. 2004, c.17 (the “Act”), provides for changes to the medical malpractice liability system to ensure that the residents of this State have access to highly-trained health care practitioners in all specialties. One of the means by which the Act seeks to achieve this goal is the establishment of the Fund, which is intended to provide premium subsidies to certain practitioners and health care providers, as defined in the Act, to help ensure that access to care in particular specialties or subspecialties is not threatened as a result of the cost of medical malpractice liability insurance in this State. Monies to be distributed from the Fund are to be obtained through assessments on various parties, as set forth in N.J.S.A. 17:30-29. The Department is responsible for the administration of the Fund but not for the imposition and collection of the assessments. Pursuant to the Act, the assessments for the Fund and the disbursements of the subsidies are to occur annually over a three-year period.

In accordance with N.J.S.A. 17:30D-29g, the Department, through an extraordinary procedure authorized by that law, specially adopted and concurrently proposed rules to provide a process for administering the Fund, the determination of eligibility for payments from the Fund, and, where applicable, the determination of the increases in medical malpractice liability insurance premiums that will qualify for a subsidy in accordance with N.J.S.A. 17:30D-30b. These specially adopted rules became effective November 17, 2004 and will expire May 17, 2005. Public comments on the concurrently proposed rules may be submitted through February 18, 2005. Thereafter, and prior to the expiration date, the rules may be adopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The Department is issuing this Public Notice pursuant to N.J.A.C. 11:27-7.5, which sets forth the methodology and procedures for the determination of the class or classes of practitioners and health care providers eligible for the subsidy by specialty or subspecialty, and for providing subsidies to eligible practitioners and providers.

As provided in N.J.A.C. 11:27-7.5, the Commissioner of Banking and Insurance (“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 base rate premiums paid by practitioners 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. Practitioners in a class certified by the Commissioner, 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 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 above.

Pursuant to N.J.S.A. 17:30D-30, the Commissioner may, however, waive the foregoing 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. Based upon a review of the information mentioned below, the Commissioner, in consultation with the Commissioner of

the Department of Health and Senior Services, has made a determination that access to care for particular specialties and subspecialties is threatened.

In assessing whether access to care in certain specialties and subspecialties is threatened, the Department solicited information from various sources, including, a report entitled “Availability of Physician Services In New Jersey,” prepared by the Rutgers Center for State Health Policy, premium data from medical malpractice insurers, as well as information from individual providers, provider trade associations, and the New Jersey Department of Health and Senior Services. It should also be noted that, based on information received from the agencies responsible for collecting the assessments referenced above, it appears that the original estimates of the amount of funding that will be generated by the assessments may not be reached and that it is possible that less than \$17 million will be available for distribution from the Fund. When considering whether access to care in a particular specialty was so significantly threatened so as to warrant a determination that practitioners in that specialty would be deemed eligible for the subsidy, the Department recognized the limited amount of funds available for distribution and recognized that the greater the number of classes eligible to receive subsidies from the Fund, the lower any premium subsidy available to be distributed to individual eligible practitioners and providers would be. Thus, conferring eligibility upon any classes of practitioners other than those in specialties where access to care is most seriously threatened would minimize or eliminate the effect of the subsidy. Such a result would be contrary to the intent of the Legislature in enacting the Act.

In conducting its analysis, the Department focused on data specifically addressing the numbers of practitioners in designated specialties and subspecialties and information indicating the extent to which the scope of the practice of practitioners in those specialties has been limited

or curtailed in recent years. In addition, the Department focused on the average base rate for medical malpractice liability coverage in the designated specialties and on those specialties which experienced particularly significant increases in base rates during the period for which data was obtained.

Based upon its review of available information, the Department has made a preliminary determination, subject to change based on further analysis, that access to care is threatened for the following specialties and subspecialties:

1. Obstetrics/gynecology [practices limited to gynecology alone are excluded];
2. Neurological surgery; and
3. Diagnostic radiology [limited to radiologists who read mammograms].

It should be noted that this is a preliminary list. In addition to commenting on the merits of these preliminary determinations, any interested party, including any group of specialists not included in the list, may submit additional information to the Department which they believe establishes that access to care in that specialty or subspecialty is so seriously threatened as to warrant it being deemed eligible for the subsidy.

In accordance with N.J.A.C. 11:27-7.5(f), this 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](http://www.njdobi.org). In addition, this Public Notice shall be published in the New Jersey Register. Interested parties shall have 30 days from the date of posting the Notice on the Department's website, February 3, 2005, to provide written comments on the Department's preliminary determination on the classes of

specialties and subspecialties proposed to be eligible for the receipt of a subsidy as set forth above. Accordingly, interested parties may submit written comments by March 7, 2005 to:

Vicki Mangiaracina  
Special Deputy Commissioner  
New Jersey Department of Banking and Insurance  
20 West State Street  
P.O. Box 325  
Trenton, NJ 08625-0325  
Fax: (609) 777-0508  
Email: [MMLIPA@dobi.state.nj.us](mailto:MMLIPA@dobi.state.nj.us)

All comments received are considered to be public records. In accordance with N.J.A.C. 11:27-7.5(f)2, after giving due consideration to any comments received, the Commissioner shall, in consultation with the Commissioner of the Department of Health and Human Services, thereafter issue an Order establishing the classes of practitioners and providers eligible to receive the first of the three subsidies.

2/3/05  
Date

JC04-22/INOREGS

/s/ Holly C. Bakke  
Holly C. Bakke  
Commissioner