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BULLETIN NO. 04-13

TO: ALL INTERESTED PARTIES

FROM: HOLLY C. BAKKE, COMMISSIONER
NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE

SUBJECT: THE NEW JERSEY MEDICAL CARE ACCESS AND RESPONSIBILITY
AND PATIENTS FIRST ACT

The New Jersey Department of Banking and Insurance (Department) is issuing this Bulletin in response to questions received about the New Jersey Medical Care Access and Responsibility and Patients First Act (the Act), P.L. 2004, c. 17, enacted on June 7, 2004. The Act addresses the escalation in medical malpractice premiums, which has created a crisis of affordability in the purchase of necessary liability coverage for New Jersey health care providers. This Bulletin addresses several questions that have arisen regarding certain provisions of the Act. This Bulletin is for guidance purposes only pending promulgation of administrative rules and is not intended to constitute a discussion of all aspects of the Act.

Notice of Renewal or Nonrenewal

Section 19 of the Act requires that each notice of renewal or nonrenewal of a medical malpractice liability insurance policy issued by an insurer authorized to transact medical malpractice liability insurance in this State be mailed or delivered by the insurer to the insured

not less than 60 days prior to the expiration of the policy and, in the case of a nonrenewal, shall contain the reason for the nonrenewal. Currently, N.J.A.C. 11:1-20.2(g), which is applicable to medical malpractice policies, requires that a nonrenewal notice contain the standard or reason upon which the termination is premised and specify in detail the factual basis upon which the insurer relies. The Act, therefore, imposes no new or different requirements with respect to including the reasons for nonrenewal in notices of the nonrenewal of medical malpractice insurance policies.

Insurers have asked when the requirement imposed by the Act that notice be provided 60 days prior to the renewal or nonrenewal of a medical malpractice policy will go into effect. Section 33 of the Act provides that the section mandating the minimum 60 day notice for renewals and nonrenewals of medical malpractice policies shall take effect on the ninetieth day after the date of enactment, which is September 5, 2004. The minimum 60-day notice requirement imposed by the Act therefore applies to all renewal and nonrenewal notices on medical malpractice policies issued on or after the effective date. In other words, policies expiring on or after November 5, 2004, would be subject to the 60-day notice requirement.

In the interim, N.J.A.C. 11:1-20.2(b), which provides that a notice of nonrenewal shall not be valid unless it is mailed or delivered to the insured by the insurer not more than 120 days nor less than 30 days prior to the expiration of the policy, and N.J.A.C. 11:1-20.2(c), which requires renewal notices to be sent within the same timeframe as notices of nonrenewal and that renewal notices include the amount of the renewal premium and any change in contract terms, will continue to be applicable to medical malpractice policies that expire prior to November 5, 2004.

**Dismissal of Medical Malpractice Claim within 180
Days Preventing Increase in Premium on Basis of that Claim**

Section 17 of the Act prohibits insurers authorized to transact medical malpractice liability insurance in this State from increasing the premium on any medical malpractice liability insurance policy because of a claim of medical negligence or malpractice against the insured, if the insured is dismissed from an action alleging medical malpractice which was based upon that claim within 180 days of the filing of the last responsive pleading in the action. Insurers have asked when this prohibition imposed by the Act will go into effect. Section 33 of the Act provides that the section prohibiting the increase in medical malpractice policy premiums shall take effect on the ninetieth day after the date of enactment, which is September 5, 2004. Therefore, all medical malpractice policies written or renewed on or after September 5, 2004 would be subject to this prohibition.

Any questions about this Bulletin or the Act may be directed to the Douglas A. Wheeler, Assistant Commissioner, Department of Banking and Insurance, 20 West State Street, P.O. Box 325, Trenton, New Jersey 08625-0325.

7/26/04
Date

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

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