

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE MEDICAL)
MALPRACTICE LIABILITY) DECISION AND ORDER
INSURANCE PREMIUM ASSISTANCE)
FUND - PREMIUM SUBSIDY FOR 2006)

This matter relates to the determination of eligibility for receipt of a premium subsidy from the Medical Malpractice Liability Insurance Premium Assistance Fund (the “Fund”) for 2006 (payable in 2007) in accordance with N.J.S.A. 17:30D-30a(2) and N.J.A.C. 11:27-7.5.

Background

The New Jersey Medical Care Access and Responsibility and Patients First Act, P.L. 2004, c. 17 (the “Act”) enacted changes to the medical malpractice liability system to ensure that the residents of this State have adequate 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 obtained through assessments on various parties, as set forth in N.J.S.A. 17:30D-29. The Department of Banking and Insurance (“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 will 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, N.J.A.C. 11:27-7, 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. Public comments on the concurrently proposed rules were submitted through February 18, 2005. Thereafter, the concurrently proposed rules were adopted on May 16, 2005, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

On March 14, 2007, the Department issued a Public Notice as required by N.J.S.A. 17:30D-28 et seq. and N.J.A.C. 11:27-7.5(f) regarding the preliminary determination of eligibility for a premium subsidy from the Fund for the year 2006.

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. Pursuant to N.J.S.A. 17:30D-30 practitioners in a class certified by the Commissioner on the basis described above, 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, for purposes of the subsidy for calendar year 2006, made a preliminary determination that access to care for certain specialties and subspecialties is threatened.

It should be noted that, as was also noted in Order Nos. A05-122 and A06-114 regarding determination of eligibility for the subsidy for calendar years 2004 and 2005, respectively, when considering whether access to care in a particular specialty was so significantly threatened as to

warrant a determination that practitioners in that specialty would be deemed eligible for the subsidy, the Department recognized that, in view of the limited amount of funds available for distribution, the greater the number of classes deemed 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 ameliorative effect of the subsidy. Such a result would be contrary to the intent of the Legislature in enacting the Act.

In assessing whether access to care in certain specialties and subspecialties was threatened as referenced in the Act, the Department solicited information from various sources, including: a report entitled “Availability of Physician Services In New Jersey: 2001-2006,” prepared by the Rutgers Center for State Health Policy; premium and exposure volume data from medical malpractice insurers; and information from the New Jersey Board of Medical Examiners and the New Jersey Department of Health and Senior Services (“DHSS”).

In conducting its analysis, the Department focused on data specifically addressing the numbers of practitioners engaged in designated specialties and subspecialties in recent years and information indicating the extent to which practitioners in those specialties have curtailed the providing of, or declined to offer certain services 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 made a preliminary determination, which it indicated was subject to change based on further analysis and the receipt

of additional information, that access to care is threatened for the following specialties and subspecialties:

1. Obstetrics/gynecology (practices limited to gynecology alone are excluded); and
2. Neurosurgery.

As set forth in the March 14, 2007 Public Notice of its preliminary determination, these specialties and subspecialties are the same as those that were determined to be eligible for the 2004 subsidy (payable in 2005) and the 2005 subsidy (payable in 2006) pursuant to Order Nos. A05-122 and A06-114, respectively. However, the Public Notice also noted that the Department had preliminarily determined, after review of the then available information as set forth therein, that diagnostic radiologists who perform mammograms, who had previously been deemed eligible for the 2004 and 2005 premium subsidies, should not be eligible for the 2006 premium subsidy.

In accordance with N.J.A.C. 11:27-7.5(f), a Public Notice of that preliminary determination was 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 was also posted on the Department's web site: www.njdobi.org. In addition, the Public Notice was published in the New Jersey Register. See 39 N.J.R. 1532(b). Interested parties were permitted to submit written comments until April 13, 2007.

Summary of Comments

The Department received timely written comments from the following:

1. Julie K. Timins, M.D., F.A.C.R.;

2. David A. Dowe, M.D., President and CEO, Atlantic Medical Imaging, L.L.C. and Atlantic Radiologists, P.A.;
3. John D. Fanburg, Esq., WolfBlock Brach and Eichler, on behalf of the Radiological Society of New Jersey;
4. Stephen G. Dorsky, M.D., F.A.C.S., New Jersey Spine Center; and
5. Carl J. Chiapetta, M.D.

Three of the five commenters were from or on behalf of diagnostic radiologists and requested that diagnostic radiologists who perform mammographies be included in the list of eligible specialties for the premium subsidy for 2006.

One commenter stated that the provision of mammographic services is problematic in that: it is poorly reimbursed by insurers, Medicare and Medicaid; mammographic interpretation is difficult and demanding, and depends on perception of often subtle radiographic findings; missed or delayed diagnosis of breast cancer is the leading cause of substantial jury awards in medical malpractice suits; radiologists who interpret mammography are subject to significantly higher medical malpractice liability insurance premiums; increasingly, radiological practice groups in New Jersey limit the number of radiologists within their groups who interpret mammographies; the majority of young radiologists who have completed their residency training and are interviewing for jobs refuse to interpret mammograms because of potential liability issues; increasing numbers of radiologists who have been in practice many years are ceasing to read mammography; and in many areas in New Jersey mammography is becoming a “boutique” medical service, with its availability limited to those who can afford to pay in cash.

This commenter additionally stated that all diagnostic radiologists have had medical malpractice liability insurance premium increases over the last five to eight years, even in the

absence of malpractice litigation. This commenter stated that, six to eight years ago, her premiums were \$13,000.00 per year for \$5 million per event/\$7 million per year coverage, and this year her premiums were \$20,408.00 for one \$1million/\$3 million coverage. This commenter thus requested that the Department continue to provide medical malpractice liability insurance premium subsidies to diagnostic radiologists who provide mammography services.

Another commenter stated that the reasons provided by the Department in the March 14, 2007 Public Notice for excluding diagnostic radiologists who perform mammography are contrary to its experience. The commenter stated that it continues to find it very time consuming and costly to recruit diagnostic radiologists for a New Jersey based practice, which suggests an on-going shortage of available candidates to fill required positions. In addition, the commenter stated that litigation for misdiagnosis of breast cancer continues to be one of the leading reasons behind the nationwide malpractice dilemma. The commenter stated that while most insurers may have reduced their base policy rates slightly, receiving a summons notice for even one incident of an alleged misdiagnosis would likely result in a premium increase the following policy year. This commenter similarly requested that the Department reconsider its preliminary determination to exclude diagnostic radiologists for eligibility for the current premium subsidy.

Another commenter stated that its data indicates that medical malpractice premiums for radiologists who perform mammography continue to climb. The commenter stated that from 2005 to 2006, the medical malpractice liability insurance premiums for radiologists increased on average by eight percent on policies underwritten by one insurer and 14 percent on policies underwritten by another insurer, which is the largest medical malpractice insurer in New Jersey. The commenter also noted that another insurer has submitted a rate/rule filing with the Department to create a new rate subclass specifically for mammographers at a proposed

premium rate of over 15 percent above diagnostic radiologists that do not perform mammography. The commenter also indicated, similar to another commenter, that since the inception of the Fund, reimbursement from mammographic procedures has gone down or stayed flat. The commenter believed that this rise in insurance premiums, coupled with reduced reimbursement for mammographic procedures, creates an economic disincentive for diagnostic radiologists to perform mammography in New Jersey.

In addition, the commenter stated that, while in the aggregate, some radiology practice groups may not have increased total outlay of professional liability premium expenditures in excess of the Commissioner's benchmark, this is the direct result and consequence of the severity of the problem. For example, in New Jersey, many radiology groups are reporting an increase in the total number of radiologists in order to keep up with the demand for diagnostic imaging growing at a rate of 15 percent per year, while simultaneously reducing the number of radiologists in the group who will provide mammography services. The commenter stated that the net result may yield a lower professional liability payment obligation, but that this is as a result of curtailing access to mammography, thereby creating an economic incentive to reduce the number of mammographers at a practice group. The commenter concluded that although the Department indicated in its Public Notice that the preliminary data shows a slight increase in the number of in-force insured exposures in diagnostic radiology, that data alone cannot support a conclusion that there has been an increase in the number of physicians who are specializing in mammography. The commenter averred that while the number of diagnostic radiologists in total may have increased, the number of diagnostic radiologists reading mammography has decreased. The commenter further noted that while the Department's preliminary data indicated that the average base rate premium for most diagnostic radiologists has slightly decreased, the data may

be including diagnostic radiology as a whole and not specifically diagnostic radiologists who read mammograms.

This commenter also believed that the Department's preliminary determination that available information does not support the conclusion that adequate access to the specialty of diagnostic radiology currently is threatened, is "false and based upon a misinterpretation of data." The commenter stated that according to data compiled by the American College of Radiology ("ACR"), 54 percent of all radiologists interpret mammograms in the Northeast census region; and 52 percent of all radiologists interpret mammograms in the Mid-Atlantic census region; which, includes New Jersey. The commenter noted that these statistics include radiologists that read a single mammogram or many mammograms. The commenter further stated that these numbers are significantly reduced as it pertains to eligibility for the subsidy, which for the prior two years has required that such radiologists meet the standards of the Federal Mammography Quality Standards Act and rules, which require that radiologists interpret or multi-read at least 240 mammographic examinations during the immediately preceding six month period. The commenter cited as an example, an article published by ACR in November 2006, entitled "A Portrait of Breast Imaging Specialists and the Interpretation of Mammography in the United States," which indicated, based upon national data compiled by the ACR, that only five percent of radiologists spend at least 70 percent of their clinical work time performing breast imaging. Further, only 28 percent of the total radiologists perform at least 2,000 mammographic studies per year, and only 7.2 percent perform at least 5,000 mammographic studies per year. The commenter believed that this illustrates a striking national shortage of specialists qualified to perform mammography services.

The commenter also cited statistics from the New Jersey Bureau of Radiologic Health regarding patient wait times to receive a mammography examination as compiled through facility inspections and telephone surveys. The study indicated that there exists a wait time of one to three months at 17 to 20 percent of facilities, and four percent of the facilities have wait times of four months or longer, with even longer wait times in the northern part of New Jersey. The commenter stated that excessive patient wait times are the direct result of a shortage of physicians specializing in mammography. The commenter further cited data provided by the ACR to the Institute of Medicine, subsequently published in a 2005 report entitled "Improving Breast Imaging Quality Standards" which indicates that in the United States 2.4 radiologists interpret mammograms per 10,000 women aged 40 and over. The commenter also stated that in New Jersey there are 2.9 radiologists who interpret mammograms per 10,000 women aged 40 and over. The commenter believed that this shortage is alarming and that these statistics can only be improved by increased access to diagnostic radiologists who read mammograms.

The commenter further stated that the shortage of qualified mammographers is a national trend and that the article published by ACR in November 2006 shows that a large proportion of breast imaging fellowships are not being filled, and many breast imaging specialists are not recommending this specialty as a career choice to medical students because mammography has the lowest revenue earning potential and the highest professional liability exposure among radiologists.

The commenter also commended the Department for its role in striving to improve patient care by increasing access to classes of physicians to whom access is threatened. The commenter further stated that many experienced mammographers in New Jersey have suspended a decision to eliminate performing mammography because of the subsidy assistance provided the

past two years. As the Fund has been successful in curtailing the spiraling premium costs of medical malpractice liability insurance, depriving diagnostic radiologists of the benefit of the subsidy will cause a severe drop-off in the number of physicians willing to shoulder the additional financial burden inherent with performing mammography.

The commenter also recognized the Department's position that distribution to a greater number of eligible classes to receive subsidies will lower premium subsidy dollars available to individual practitioners. However, the commenter stated that no additional classes of subspecialties have been proposed by the Department. Accordingly, continuing to include diagnostic radiologists who perform mammographies as a subclass would not dilute the pool of funds available, but rather would repeat the successful distribution of the subsidy consistent with subsidies provided for the prior two years. The commenter also stated that such a determination would accomplish the goal of the Fund: to provide a subsidy to those classes of physicians most in need where access to care is most seriously threatened.

The commenter also expressed concern with the ability of the Commissioner to adjust the proportional amount of the subsidy distributed to an eligible class based on the average expenditure for medical malpractice liability insurance by practitioners in a class relative to the average expenditure by practitioners in the other eligible classes. The commenter stated that pursuant to N.J.S.A. 17:30D-30b(3) the amount of the subsidy provided to eligible practitioners should be in the amount of the increase from the preceding year's premium or self-insured professional liability funding obligation. Accordingly, determination by the Department that the amount of the premium subsidy made to each applicant in an eligible specialty or subspecialty would be proportionate to the average expenditure for medical malpractice liability insurance coverage of each eligible specialty is in error. Rather, in order to determine the amount of the

premium subsidy made to each eligible applicant, the average increase from the preceding year's premium in a qualifying specialty should be awarded to each eligible applicant in proportion to the total number of dollars available in the Fund for distribution.

One commenter reiterated concerns expressed in 2006 that spine surgery should be classified in the same category as neurosurgeons for purposes of eligibility for the premium subsidy. The commenter stated that the overwhelming majority of spine surgeons in this State are fellowship trained orthopedic surgeons who have undertaken fellowships in spine surgery. The cost of medical malpractice liability insurance for this group of surgeons overall is significantly higher than that being paid by the general orthopedist. The commenter stated that most carriers in this State are also reluctant to provide insurance to this group of individuals in that they are considered to represent a high risk group. The commenter stated that last year, the Department suggested that the quality of spinal care in this State would not be affected by not including spine surgeons as eligible for the Fund. Although neurosurgeons do have areas of cross over in care with spine surgeons, as a group they tend not to do many of the more complicated cases undertaken by some of the spine surgeons in this State. The commenter stated that spine surgeons as a group tend to be more involved in many of the more complicated cases that are eschewed by other surgeons. These categories of surgery include revision spinal surgery, non-unions, deformity cases, and other high risk complex reconstructions that most surgeons refuse to do. The commenter believed that undertaking such extremely high risk procedures is problematic with fewer surgeons willing to subject themselves to the inherent risks of the procedures in light of the present medical malpractice liability insurance crisis. The commenter concluded that eliminating spine surgeons from this program in 2007 will continue the present trend where high risk spine surgery becomes less available. The commenter stated

that his office has experienced a several fold increase in patients coming in for complex reconstructions who state that the care that they need is not readily available elsewhere in this State.

One commenter opposed the subsidy for any specialty. The commenter did not believe that anyone else should have to share the burden of the medical malpractice liability insurance costs. The commenter stated that the Department should reconsider “punishing everyone for their cost of doing business.”

Analysis

Initially, the Department notes that no commenter objected to the specialties that were proposed to be eligible for a premium subsidy as set forth in March 14, 2007 Public Notice. None of the additional information received and reviewed by the Department showed an abatement in the threat to the access to care for obstetric/gynecology or neurosurgery. Accordingly, for the reasons set forth in the Public Notice, the Department finds that obstetric/gynecology (with practices limited to gynecology alone being excluded) and neurosurgery are specialties/subspecialties that should be eligible to receive a subsidy from the Fund for 2006 (payable in 2007).

The issues raised by the timely comments relate to whether diagnostic radiologists who perform mammography should be eligible to receive a subsidy; whether spine surgeons should be categorized as neurosurgeons or otherwise deemed to be eligible to receive a subsidy from the Fund; and whether any subsidies should be provided to practitioners in any specialties.

As was done with respect to the premium subsidies for 2004 and 2005, payable in 2005 and 2006, respectively, in addition to evaluating any information in the comments previously

mentioned, the Department considered the premium data supplied by medical malpractice liability insurers, the report and supporting data provided by the Rutgers Center for State Health Policy, and continued to consult with the Department of Health and Senior Services as part of its analysis of the issues raised by the comments. The Department evaluated all of the information received from these various sources in making its final determination of the classes of practitioners deemed eligible to receive the subsidy from the Fund for 2006 (payable in 2007).

Based on a review of the comments and its additional review and analysis set forth above, the Department continues to believe that access to care is most seriously threatened in the specialties set forth in the Public Notice issued March 14, 2007 in accordance with N.J.A.C. 11:27-7.5(f) and previously set forth herein. Accordingly, OB/GYNs and neurosurgeons shall be eligible to apply for a 2006 subsidy from the Fund in 2007.

Initially, in response to the comment that physicians and others should not be required to subsidize other physicians for the premium subsidy, the Department notes that this comment is outside the scope of the Public Notice. The Fund and the distribution of premium subsidies from it by the Department are expressly established and required by the Act.

In addition, with respect to the comment that the proportionality of the premium subsidy is contrary to N.J.S.A. 17:30D-30b(3), the Department notes that this comment is similarly outside the scope of the Public Notice. Moreover, the provision for establishing proportionality in the amount of the subsidy is expressly provided in N.J.A.C. 11:27-7.7(a). These proposed amendments appeared in the April 3, 2006 issue of the New Jersey Register (38 N.J.R. 1511(a)), were adopted on June 8, 2006, and become effective July 3, 2006. Comments on the proposed amendments were received through June 2, 2006. No comments were received. As the Department noted in the Summary of the proposed amendments, where a determination is made

that access to care is threatened, the Commissioner may adjust the proportional amount of the subsidy distributed to an eligible class based on the average expenditure for medical malpractice liability insurance by practitioners in an eligible class relative to the average expenditure by practitioners in the other eligible classes. This approach is designed to help ensure that eligible practitioners receive subsidies proportionate to their expenditures as a class for medical malpractice liability insurance. Under the procedures utilized for the 2004 subsidy (distributed in 2005), all eligible practitioners received the same subsidy amount irrespective of the amount of their expenditures, as a class, for medical malpractice liability insurance. Accordingly, practitioners paying less for medical malpractice liability insurance relative to those in other eligible classes had a greater proportion of their expenditures reimbursed by the subsidy, while those paying more received a lower proportionate share of those expenditures. Thus, the subsidy for 2004 had less of an ameliorative effect on eligible practitioners in those classes which had the highest average expenditure for malpractice coverage. The Department continues to believe that the revised procedure established by N.J.A.C. 11:27-7.7(a) as amended in July, 2006 is consistent with the intent of the Act to provide premium subsidies for those classes most significantly threatened due to the cost of medical malpractice liability insurance.

Upon review of the comments and additional data received since the Department's preliminary determination set forth in the March 14, 2007 Public Notice, the Department, in consultation with DHSS, has determined that qualifying diagnostic radiologists who perform mammograms should be eligible to receive a subsidy from the Fund for 2006 (payable in 2007).

Initially, it should be noted that the limited, general data on the number of insured exposures that the Department relied upon when formulating the Public Notice was based on diagnostic radiologists as a whole, and thus is not indicative of the number of diagnostic

radiologists who perform mammograms. Since its issuance of the Public Notice reciting its preliminary determinations on eligibility for the 2006 subsidy, the Department has received and had the benefit of additional data, including the updated Rutgers Study and information provided by the commenters.

Similarly, the premium data received by the Department from insurers reported upon diagnostic radiology as a class. While that data indicates that for 2006 insurers industry-wide may have slightly reduced average base rates for the overall class designated as “diagnostic radiologists,” this is not dispositive. The Department did not receive base rate data specifically related to diagnostic radiologists who perform mammograms. However, in a recent filing with the Department to increase rates for the entire “Diagnostic Radiologists - Minor Surgery” group, of which mammographers are a subset, one insurer at the same time filed to separate mammographers into a distinct statistical class for rating purposes going forward. This filing indicates that at least one insurer expects to see different loss experience for mammographers than for other diagnostic radiologists in the future.

It was also noted that the wait times for these services are significant (one to three months at 17 percent of facilities), which indicates that there is a shortage of qualified mammographers. In addition, while the gross number of diagnostic radiologists in New Jersey slightly increased between 2005 and 2006, there has been a decrease in the number of diagnostic radiologists per 100,000 of population Statewide and the data shows consistent decreases in counties that include highly populated urban areas, such as Essex, Hudson, Mercer, Passaic, Middlesex and Camden counties.

Based on the foregoing, the Department believes there is sufficient evidence to establish that access to diagnostic radiologists who perform mammograms is so significantly threatened as

to warrant this class being deemed eligible to apply for a subsidy from the Fund, as was the case for the previous two years.

Conversely, the Department has not found any additional data to warrant changing its initial determination and extend eligibility for the subsidy to “spine” surgeons. The commenter suggested that spine surgeons be considered neurosurgeons for purposes of receiving the subsidy from the Fund. This does not reflect the classification of such surgeons by medical malpractice liability insurers. While some insurers distinguish orthopedic surgeons who perform spinal surgery from those who do not, and assign to those who perform spinal surgery a higher premium rate, the Department is not aware of any company that classifies or rates such surgeons as neurosurgeons. In addition, no evidence was provided to suggest that access to care is so significantly threatened with respect to spine surgeons as to warrant their inclusion as a subspecialty eligible to receive a subsidy from the Fund at this time.

Based on N.J.A.C. 11:27-7.7(a), the subsidy for each specialty will be determined so that it is directly proportional to the relative average expenditure for medical malpractice liability coverage of each eligible specialty. The formula will be as follows:

Premium subsidy equals (the average expenditure for practitioners of the specialty) multiplied by [(collected subsidy fund dollars) divided by (total expenditure for all qualified applicants)]. The "total expenditure for all qualified applicants" will not be the actual total premiums collected for those specific policies, but rather a sum of the average base rates for each specialty (based on the Department’s survey) multiplied by the number of qualified applicants in each specialty. The Department utilized average base rates to calculate average expenditures in an effort to minimize distortion. The use of an average paid premium, instead of base rates,

would be subject to greater distortion attributable to factors affecting individual insureds, such as increased limits options, claims made maturity factors, and rating tiers.

Conclusion

Based on the foregoing, it is on this 23rd day of July, 2007 ORDERED that:

1. Applications for a 2006 premium subsidy as referenced herein may be filed in accordance with the form and instructions set forth on the Department's website at www.njdobi.org. Applications shall be filed no later than 5 P.M. (EDT) on August 24, 2007.

2. Practitioners and healthcare providers whose primary practice area is in one of the following specialties or subspecialties shall be eligible to apply for a subsidy from the Fund for 2006:

- i. Obstetric/gynecology (practices otherwise limited to gynecology alone are excluded);
- ii. Neurosurgery; and
- iii. Diagnostic radiology (limited to radiologists who read mammograms.)

The radiologist must be a New Jersey board certified or board eligible radiologist and be certified as meeting the requirements under the Federal Mammography Quality Standards Act and regulation.

3. The amount of the premium subsidy for applicants in each eligible specialty or subspecialty shall be proportionate to the average expenditure for medical malpractice liability coverage, and will be calculated as set forth herein.

/s/ Steven M. Goldman
Steven M. Goldman
Commissioner