

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Medical Malpractice Insurance-Renewal and Nonrenewal Notices

Adopted Amendment: N.J.A.C. 11:1-20.2

Adopted New Rules: N.J.A.C. 11:27-6.

Proposed: November 1, 2004 at 36 N.J.R. 4871(a).

Adopted: April 26, 2005 by Donald Bryan, Acting Commissioner, Department of Banking and Insurance.

Filed: April 29, 2005 as R. 2005 d. 169, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1-5e and 17:30D-31 (P.L. 2004 c. 17 § 32).

Effective Date: June 6, 2005

Expiration Date: January 21, 2006, N.J.A.C. 11:1
June 6, 2010, N.J.A.C. 11:27

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) received written comments from the following: Raymond E. Cantor, Director of Governmental Affairs, Medical Society of New Jersey; Ervin Moss, MD, Executive Medical Director, New Jersey State Society of Anesthesiologists and the law firm of Pringle Quinn Anzano on behalf of ProSelect Insurance Company.

COMMENT: One commenter noted that, with the exception of N.J.A.C. 11:1-7.1, the rules do not define the term “medical malpractice insurance”. The commenter requested that the Department clarify the definition of “medical malpractice insurance” applicable to these rules.

RESPONSE: Given the presence of the definition of “medical malpractice liability insurance” in the Medical Malpractice Liability Insurance Act, N.J.S.A. 17:30D-1 et seq. at N.J.S.A. 17:30D-3d, the Department does not believe it is necessary to include a similar definition in

N.J.A.C. 11:27. The definition in N.J.S.A. 17:30D-3 would be applicable to references to “medical malpractice liability insurance” and to “medical malpractice insurance” in N.J.A.C. 11:27.

COMMENT: One commenter indicated that it is unclear whether the proposed rules apply to insurance exchanges writing medical malpractice insurance.

RESPONSE: N.J.S.A. 17:30D-19 requires that “...each notice of renewal or nonrenewal by an insurer authorized to transact medical malpractice liability insurance in this State shall 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.” Insurance exchanges may only make, issue or deliver medical malpractice policies in New Jersey if they have been authorized by the Commissioner to do so. See N.J.S.A. 17:50-11. Thus, the rules in N.J.A.C. 11:27 will be applicable to medical malpractice policies made, issued or delivered in New Jersey by authorized insurance exchanges.

COMMENT: Several commenters stated that they supported the proposed rule. They noted it would give physicians additional time to seek other coverage if their policies were not renewed or contract terms were changed.

RESPONSE: The Department appreciates the expression of support for the proposal.

COMMENT: One commenter stated that the 120 days to 30 days minimum notification of a change in contract seems too wide a time gap and suggested a time frame of from 120 days to 60 days.

RESPONSE: The Department agrees that the timeframe for notification of a change in the contract on a medical malpractice liability policy should be from 120 to 60 days. That is what is proposed in the amendment at N.J.S.A. 11:1-20.2(m). The 120 to 30-day timeframe referenced by the commenter applies to commercial and homeowners insurance policies.

COMMENT: One commenter stated that the rules should require the notice of nonrenewal to be in writing. The commenter noted that this is the requirement with respect to premiums but it is not explicit for notices of non-renewal. The commenter also stated that this written notice should actually be sent to the insured and not merely to the insurance broker. The commenter continued that they have heard of situations where notice to the insured is delayed because it was sent only to the broker and noted that such a delay can harm a physician's opportunity to seek other coverage, especially in the current market.

RESPONSE: The Department does not agree that the rules do not specify that the notice of nonrenewal must be in writing. N.J.A.C. 11:1-20.2(a) requires a "valid notice of nonrenewal... mailed or delivered...." The Department believes that requiring a notice to be "mailed or delivered" can only be accomplished if it is in written form. The Department agrees with the commenter that this written notice should actually be sent to the insured and not merely to the insurance broker. The Department notes that N.J.A.C. 11:1-20.2(b) requires the mailing or delivery of the notice "to the insured." The Department notes that failure to send the notice to the insured would result in no notice being timely sent and, if notice is not timely sent, there could be no nonrenewal or change in the contract terms upon renewal. See N.J.A.C. 11:1-20.2(j).

COMMENT: One commenter stated that notices of cancellation of a policy should be required to include a reason for the cancellation.

RESPONSE: The Department already requires that a notice of nonrenewal or cancellation contain the standard or reason upon which the termination of coverage is based and the factual basis for the insurer's termination of coverage. This is set forth at N.J.A.C. 11:1-20.2(g).

COMMENT: One commenter stated that N.J.A.C. 11:1-20.2(c) should be amended to mirror the language of N.J.A.C. 11:1-20.2(m), so that confusion is not created by the amendments to N.J.A.C.11:1-20.2(c).

RESPONSE: The Department does not believe there is any confusion created by the amendments to N.J.A.C. 11:1-20.2. The general rules of N.J.A.C. 11:1-20.2(c) apply to all commercial insurance and homeowners insurance policies. N.J.A.C. 11:1-20.2(m) specifies the exceptional timeframe applicable to notices of renewal or non-renewal on medical malpractice insurance policies.

Federal Standards Statement

The adopted amendments and new rules are not subject to any Federal standards or requirements. Therefore a Federal standards analysis is not required.

Full text of the adoption follows:

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