

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Commercial Lines Insurance
Policy Form Standards
Proposed Amendment: N.J.A.C. 11:13-7.3

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1 and 15e; P.L. 2004, c.17

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN-418

Submit comments by December 31, 2004 to:

Douglas Wheeler, Assistant Commissioner
Department of Banking and Insurance
Legislative and Regulatory Affairs
20 West State Street
PO Box 325
Trenton, NJ 08625-0325
Fax: 609-292-0896
Email: Llegsregs@dobi.state.nj.us

The agency proposal follows:

Summary

The New Jersey Medical Care Access and Responsibility and Patients First Act (the Act) (P.L. 2004, c. 17), approved June 7, 2004, was the Legislature's response to a medical malpractice liability insurance crisis in this State. The crisis created an affordability problem for physicians who indicated that escalating premiums directly caused some of them to leave New Jersey to practice elsewhere, scale back their practices or retire from the practice of medicine altogether. The Act was designed to

address this affordability problem by reforming three primary components of the medical malpractice system: comprehensive tort reform; changes to New Jersey's health care system; and tightening the regulation of medical malpractice insurers.

Section 25 of the Act amends N.J.S.A. 45:9-19.17 (the State Board of Medical Examiners statutory provision related to mandatory medical malpractice liability insurance coverage for physicians) by establishing minimum coverage requirements. The Department's commercial lines insurance rules related to policy form standards appear at N.J.A.C. 11:13. N.J.A.C. 11:13-7.3 addresses defense costs within policy limits, including medical malpractice professional liability insurance policies. The purpose of this proposed amendment is to include therein a reference to the new coverage requirements established by the Act.

A 60-day comment period is provided on this notice of proposal, and therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

To the extent that it is part of the package of rulemaking proposals implementing the Act, this proposed amendment should have a favorable social impact, as it is designed to address problems in the medical malpractice insurance marketplace that have threatened the adequacy of access to particular types of healthcare in certain areas of the State.

Economic Impact

This proposed amendment merely notifies medical malpractice carriers that their policy forms must meet the minimum coverage requirements mandated by N.J.S.A. 45:9-19.17.1a as amended by the Act, and thus will have no direct economic impact on carriers. As carriers will be able to charge rates that correspond to the level of coverage being provided, any policies on which coverage levels are increased to comply with the new minimum coverage levels prescribed by the Act will not have an adverse economic impact on the carriers providing such policies.

Federal Standards Statement

A Federal standards analysis is not required because this proposed amendment is not subject to any Federal standards or requirements.

Jobs Impact

To the extent that the Act provides options which, if exercised by policyholders, can reduce medical malpractice liability insurance rates, the number of practitioners choosing to retire, leave New Jersey or scale back their practices should decrease. Thus, this and the other rules implementing that Act should have a positive jobs impact on the medical community.

The Department invites commenters to submit any data or studies concerning the job impact of the proposed new rule.

Agriculture Industry Impact

The Department does not believe that this proposed amendment will have any impact on the agriculture industry in the State.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is required because a small number of admitted medical malpractice liability carriers may employ fewer than 100 full-time employees and would therefore, be “small businesses” as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment merely provides notice to these carriers that their policy forms must comply with the minimum coverage limits established in the Act. The costs of compliance will be minimal, if any, and the Act's requirements will affect all carriers regardless of size.

The proposed amendment provides no different compliance requirements specifically based on business size. Businesses of all sizes should be able to comply without the need for additional professional services. Providing different compliance requirements based on business size would thwart the intent of the Legislature as expressed in the Act, which was to increase the affordability of medical malpractice liability insurance for medical professionals. Therefore, the proposed amendment provides no differentiation in compliance requirements based on business size.

Smart Growth Impact

The proposed amendment will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**):

11:13-7.3 Defense costs within policy limits

(a) - (c) No change.

(d) Regardless of whether they include defense costs within policy limits, all medical malpractice professional liability insurance policies covering physicians issued by carriers authorized to write such policies in this State shall comply with the provisions of N.J.S.A. 45:9-19.17.1.a and any applicable rules of the State Board of Medical Examiners at N.J.A.C. 13:35.

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