

**INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF INSURANCE**

**Medical Malpractice Liability Insurance Purchasing Alliances**

**Proposed New Rules: N.J.A.C. 11:27-9**

Authorized By: Donald Bryan, Acting Commissioner, Department of Banking and Insurance.

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

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

Proposal Number: PRN 2005-173

Submit comments by July 15, 2005 to:

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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 14 of the Act, N.J.S.A. 17:30D-19, permits physicians to join together, by means of a joint contract, to form a medical malpractice liability insurance alliance for the purpose of negotiating a reduced premium for its members in the purchase of medical malpractice liability insurance. The purpose of these rules is to implement Section 14 of the Act by establishing standards for the formation and operation of medical malpractice liability insurance purchasing alliances.

N.J.A.C. 11:27-9.1 provides the rules' purpose and scope.

N.J.A.C. 11:27-9.2 sets forth definitions of terms used throughout the rules. It should be noted that pursuant to the definitions, a purchasing alliance member includes not only individual physicians, but also a physician group practice. Otherwise, interpreting the Act too narrowly and excluding from purchasing alliances all physicians in group practice would frustrate the legislative intent to provide physicians with a means to reduce their malpractice insurance premiums.

N.J.A.C. 11:27-9.3 requires newly-formed purchasing alliances to file certain information with the Commissioner concerning the formation of the purchasing alliance, its members, and the insurance coverage to be obtained by the alliance.

N.J.A.C. 11:27-9.4 requires purchasing alliances to adopt by-laws in accordance with the Act.

N.J.A.C. 11:27-9.5 contains information concerning termination of membership in a purchasing alliance.

N.J.A.C. 11:27-9.6 sets forth certain practices in which purchasing alliances are prohibited from engaging. In accordance with N.J.S.A. 17:30D-19e(4), the rule also prohibits any alliance from representing more than 35 percent of the physicians in any one densely populated county or in any one of three regions comprised of certain specified zip codes. This geographic breakdown mirrors that contained in N.J.A.C. 11:3-29.3 with respect to the regional basis on which medical fee schedules are established to implement N.J.S.A. 39:6A-4.6.

N.J.A.C. 11:27-9.7 establishes that noncompliance with the rules violates the Act and subjects the violator to applicable penalties.

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, these proposed new rules should have a favorable social impact, as that package 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. More specifically, these proposed new rules, which will permit physicians to jointly contract with medical malpractice liability insurers for reduced premiums, may enable some physicians to continue to practice rather than

leaving the State to practice elsewhere, scaling back their practices or retiring altogether. As a result, New Jersey consumers would be favorably impacted because a greater number of physicians practicing in the State will enhance accessibility to healthcare.

### **Economic Impact**

These proposed new rules will have a favorable impact on physicians who become members of medical malpractice liability insurance purchasing alliances in that the alliances will be able to negotiate with medical malpractice insurers for lower rates for their members. New Jersey consumers may likewise benefit because purchasing alliance member physicians may be able to pass along reduced premiums to their patients in the form of lower fees. Medical malpractice liability insurers may also be favorably impacted because they may sell more medical malpractice policies to purchasing alliances than they would have sold otherwise to physicians opting to retire from or scale back their practice in this State.

### **Federal Standards Statement**

A Federal standards analysis is not required because these proposed new rules are not subject to any Federal standards or requirements.

### **Jobs Impact**

Some physicians may choose to become members of medical malpractice liability insurance purchasing alliances and experience reduced premiums rather than leave the State, retire from, or scale back their practices. To that extent, the proposed new rules

may increase the number of practicing physicians in the State and have a positive impact on the medical community. These proposed new rules may also result in the generation of jobs if those physicians that become members of a medical malpractice liability insurance purchasing alliance determine that a need exists for additional employees to be responsible for managing the alliances.

### **Agriculture Industry Impact**

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

### **Regulatory Flexibility Analysis**

These proposed new rules may apply to some medical malpractice liability insurance purchasing alliances that constitute "small businesses" as that term is defined in the Regulatory Flexibility Act at N.J.S.A. 52:14B-16 et seq. The new rules require newly formed purchasing alliances to file with the Department certain information concerning the formation and operation of the alliance. Some affected purchasing alliances may need to seek outside professional services in order to comply with the reporting and recordkeeping requirements of these proposed new rules, and they will need to bear the costs related to compliance. Nevertheless, the reporting standards and procedures contained in these new rules reflect those imposed by N.J.S.A. 17:30D-19 (P.L. 2004, c. 17, § 14) and must be applied uniformly to all medical malpractice liability insurance purchasing alliances. Thus, no exemption can be made for small businesses.

### **Smart Growth Impact**

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

**Full text** of the proposed new rules follows:

#### SUBCHAPTER 9. MEDICAL MALPRACTICE LIABILITY INSURANCE PURCHASING ALLIANCES

##### 11:27-9.1 Purpose and scope

(a) This subchapter implements P.L. 2004, c. 17 by establishing rules for the formation and operation of medical malpractice liability insurance purchasing alliances.

(b) This subchapter shall apply to alliances of eligible physicians as defined at N.J.S.A. 45:9-1 et seq.

##### 11:27-9.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Board" means a medical malpractice liability insurance purchasing alliance board of directors as provided for at P.L. 2004, c. 17, § 14.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Department" means the New Jersey Department of Banking and Insurance.

"Insurer" means any insurer or insurance association authorized to issue medical malpractice liability insurance in this State.

"Medical malpractice liability insurance purchasing alliance," "purchasing alliance" or "alliance" means a purchasing alliance established pursuant to P.L. 2004, c. 17, § 14.

"Member" means a physician or a physician group practice that is a member of a medical malpractice liability insurance purchasing alliance.

#### 11:27-9.3 Filing requirements

(a) Within 30 days of formation, a medical malpractice liability insurance purchasing alliance shall file the following with the Commissioner:

1. A certification by a senior officer or other authorized representative of the purchasing alliance, which shall include:

- i. The name of the purchasing alliance;
- ii. The members of the purchasing alliance;
- iii. The names of the board of directors, chairman, treasurer and secretary of the purchasing alliance;
- iv. The New Jersey mailing address at which communications for the purchasing alliance are to be received;
- v. The eligibility requirements for membership in the purchasing alliance; and
- vi. The fees charged to members of the purchasing alliance;

vii. The identity of the insurer who is providing the medical malpractice liability insurance;

viii. A description of how coverage will be issued (that is, through individual policies or through a master policy with individual certificates of insurance);  
and

ix. The procedure and method by which return premium is calculated if a member discontinues coverage prior to policy termination;

2. A copy of the certificate of incorporation, if any, of the purchasing alliance; and

3. A copy of the joint contract executed by all members of the purchasing alliance.

(b) Filings shall be submitted to:

NJ Department of Banking and Insurance  
Surplus Lines Examining Office  
PO Box 325  
Trenton, NJ 08625-0325

(c) A current listing of the membership of the purchasing alliance as required by (a)1ii above shall be filed with the Commissioner annually. Any other change in the information specified in (a) above shall be filed with the Commissioner within 30 days of the change.

11:27-9.4 By-laws of the purchasing alliance



The purchasing alliance shall adopt by-laws, which shall comply with the requirements of P.L. 2004, c. 17, § 14c, and otherwise comply with the provisions of P.L. 2004, c. 17 and this subchapter.

11:27-9.5 Termination of membership in a purchasing alliance

(a) A physician or physician group practice may discontinue purchasing coverage as a member of a purchasing alliance at any time.

(b) A purchasing alliance may include a requirement in its bylaws or joint contract that members provide no more than 30 days notice of discontinuance to the alliance.

11:27-9.6 Prohibited practices

(a) A purchasing alliance shall not:

1. Assume risk for the cost or provision of medical malpractice liability insurance;

2. Exclude a member who agrees to pay fees for membership and the premium for medical malpractice liability insurance coverage, and who abides by the bylaws of the alliance;

3. Engage in any trade practice or activity prohibited pursuant to N.J.S.A.

17:29B-1 et seq.;

4. Represent more than 35 percent of the physicians in any one county if the population density of the county is greater than 1,000 per square mile based on the latest census data;

5. Where (a)4 above does not apply, represent more than 35 percent of the physicians in any one of the following three regions:

i. Region I, which consists of the following three digit zip codes in New Jersey: 080, 081, 082, 083 and 084;

ii. Region II, which consists of the following three-digit zip codes in New Jersey: 077, 078, 079, 085, 086, 087, 088 and 089; and

iii. Region III, which consists of the following three digit zip codes in New Jersey: 070, 071, 072, 073, 074, 075 and 076; or

6. Require a member to purchase medical malpractice liability insurance only through the alliance.

#### 11:27-9.7 Violations and penalties

Failure to comply with any of the requirements of this subchapter shall be a violation of P.L. 2004, c. 17. The purchasing alliance in violation shall be subject to all penalties provided by applicable law including, but not limited to, an order directing that the purchasing alliance cease and desist from further operations until such time as all violations are abated.