

SENATE, No. 2934

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED JUNE 15, 2009

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Co-Sponsored by:

Senator Gordon

SYNOPSIS

Revises approval process for rate changes applicable to medical malpractice liability insurance.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning medical malpractice liability insurance,
2 amending and supplementing P.L.1982, c.114, and amending
3 P.L.1993, c.240.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 3 of P.L.1982, c.114 (C.17:29AA-3) is amended to
9 read as follows:

10 3. As used in this act:

11 a. "Commercial lines insurance" includes all insurance policies
12 issued by a licensed insurer pursuant to Title 17 of the Revised
13 Statutes, except:

14 (1) Insurance of vessels or craft, their cargoes, marine builders'
15 risks, marine protection and indemnity, or other risks commonly
16 insured under marine, as distinguished from inland marine
17 insurance policies;

18 (2) Title insurance;

19 (3) Mortgage guaranty insurance;

20 (4) Workers' compensation and employers' liability insurance;

21 (5) Any policy or contract of reinsurance, other than joint
22 reinsurance to the extent provided for under section 22 of this act;

23 (6) Insurance written through the New Jersey Medical
24 Malpractice Reinsurance Association established pursuant to
25 P.L.1975, c.301 (C.17:30D-1 et seq.);

26 (7) Insurance written through the New Jersey Insurance
27 Underwriting Association established pursuant to P.L.1968, c.129
28 (C.17:37A-1 et seq.);

29 (8) Insurance issued by hospital service corporations **[and]** medical
30 service corporations and health service corporations; and

31 (9) Insurance issued for personal, family or household purposes,
32 as determined by the commissioner.

33 b. "Commissioner" means the Commissioner of Banking and
34 Insurance.

35 c. "Department" means the Department of Banking and
36 Insurance.

37 d. "Insurer" means any person, corporation, association, joint
38 underwriting association subject to section 22 of this act,
39 partnership or company licensed under the laws of this State to
40 transact the business of insurance in this State.

41 e. "Premium" means the consideration paid or to be paid to an
42 insurer for the issuance and delivery of any binder or policy of
43 insurance.

44 f. "Rate" means the unit charge by which the measure of
45 exposure or the amount of insurance specified in a policy of

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 insurance or covered thereunder is multiplied to determine the
2 premium.

3 g. "Rate-making" means the examination and analysis of every
4 factor and influence related to and bearing upon the hazard and risk
5 made the subject of insurance; the collection and collation of such
6 factors and influences into rating systems; and the application of
7 such rating systems to individual risks.

8 h. "Rating system" means every schedule, class, classification,
9 rule, guide, standard, manual, table, rating plan, or compilation by
10 whatever name described, containing the rates used by any rating
11 organization or by any insurer, or used by any insurer or by any
12 rating organization in determining or ascertaining a rate.

13 i. "Reasonable degree of competition" means that degree of
14 competition which would tend to produce rates that are not
15 excessive, inadequate, or unfairly discriminatory, or forms that are
16 not unfair, inequitable, misleading or contrary to law, as determined
17 by the commissioner.

18 j. "Risk," as the context may require, means (1) as to fire
19 insurance or any other kind of insurance which, by law, may be
20 embraced in a policy of fire insurance as part thereof or as
21 supplemental thereto, any property, real or personal, described in a
22 policy, exposed to any hazard or peril named in such policy; and (2)
23 as to all other kinds of insurance not specifically included in clause
24 (1) of this subsection, the hazard or peril named in a policy of
25 insurance.

26 k. "Special risks" mean (1) those commercial lines insurance
27 risks as specified on a list promulgated by the commissioner, which
28 are of an unusual nature or high loss hazard or are difficult to place
29 or rate or which are excess or umbrella or which are eligible for
30 export; (2) commercial lines insurance risks, other than medical
31 malpractice liability insurance risks, which produce minimum
32 annual premiums in excess of ~~【\$10,000.00】~~ \$10,000; (3) inland
33 marine insurance; or (4) fidelity, surety or forgery bonds. Additions
34 or deletions to the list promulgated may be made by the
35 commissioner without a hearing upon notice to all licensed insurers.

36 l. "Supplementary rate information" includes any manual or
37 plan of rates, statistical plan, classification, rating schedule, rating
38 rule and any other rule used by an insurer in making rates.

39 (cf: P.L.1982, c.114, s.3)

40

41 2. Section 5 of P.L.1982, c.114 (C.17:29AA-5) is amended to
42 read as follows:

43 5. a. Notwithstanding any other law to the contrary, every
44 authorized and admitted insurer and every rating organization shall
45 file with the commissioner all rates and supplementary rate
46 information and all changes and amendments thereof made by it for
47 use in this State not later than 30 days after becoming effective,
48 except with respect to medical malpractice liability insurance rate

1 changes as set forth in section 3 of P.L. , c. (C.) (pending
2 before the Legislature as this bill).

3 b. This section shall not apply to special risks except as
4 provided in section 12 of this act.

5 (cf: P.L.1982, c.114, s.5)

6
7 3. (New section) a. With respect to medical malpractice
8 liability insurance, the commissioner shall prescribe by regulation a
9 designated range of annual rate change, which shall be an increase
10 or decrease of between not less than 5% and not more than 15%,
11 and within which any rate, supplementary rate information, or
12 change or amendment thereof, filed by an insurer or rating
13 organization shall become effective not less than 30 days after the
14 filing.

15 (1) The commissioner may determine, pursuant to regulation,
16 the categories, subcategories, specialties, and subspecialties of
17 health care provider to which the application of the designated
18 range shall apply.

19 (2) Only one filing by an insurer or rating organization of a
20 proposed rate change within the designated range may take effect
21 within any 12-month period without the express approval of the
22 commissioner, as set forth in subsection c. of this section.

23 b. In prescribing the designated range of annual rate change,
24 the commissioner may consider the availability and affordability of
25 medical malpractice liability insurance for different categories,
26 subcategories, specialties, and subspecialties of health care provider
27 in relation to the capitalization and reserve requirements necessary
28 to ensure the solvency of the insurers. The commissioner may also
29 consider current data relating to the frequency and severity of
30 medical malpractice claims, and trends in the cost of investigating,
31 defending and settling claims.

32 c. Any filing by an insurer or rating organization proposing a
33 rate change which exceeds the designated range established
34 pursuant to subsection a. of this section, or proposing an additional
35 rate change within this range during any 12-month period, shall be
36 subject to approval by the commissioner pursuant to section 14 of
37 P.L.1944, c.27 (C.17:29A-14).

38
39 4. Section 13 of P.L.1982, c.114 (C.17:29AA-13) is amended
40 to read as follows:

41 13. a. If the commissioner finds, after a hearing, that a rate or
42 policy form in effect for any rating organization or insurer, whether
43 or not a member or subscriber of a rating organization, is not in
44 compliance with the standards of this act, he shall issue an order
45 specifying in what respects it so fails, and stating when, within a
46 reasonable period thereafter, such rate or form shall be deemed no
47 longer effective. The order shall not affect any contract or policy

1 made or issued prior to the expiration of the period set forth in the
2 order.

3 b. **【If the commissioner finds, after a hearing, that a rate in**
4 **effect for any insurer writing medical malpractice liability insurance**
5 **is not in compliance with the provisions of P.L.1982, c.114**
6 **(C.17:29AA-1 et seq.), the commissioner shall issue an order**
7 **specifying in what respects it so fails, and stating when such rate**
8 **shall no longer be deemed effective. The order may provide for the**
9 **retroactive adjustment of rates and require the payment or credit of**
10 **interest to insureds covered during the adjusted rate period. Interest**
11 **shall be calculated at the percentage of interest prescribed in the**
12 **Rules Governing the Courts of the State of New Jersey for**
13 **judgments, awards and orders for the payment of money.】** (Deleted
14 by amendment, P.L. , c.) (pending before the Legislature as this
15 bill)
16 (cf: P.L.2004, c.17, s.20).

17

18 5. Section 2 of P.L.1993, c.240 (C.17:47A-2) is amended to
19 read as follows:

20 2. As used in this act:

21 "Commissioner" means the Commissioner of Insurance.

22 "Completed operations liability" means liability arising out of
23 the installation, maintenance or repair of any product at a site which
24 is not owned or controlled by any person who performs that work or
25 any person who hires an independent contractor to perform that
26 work, and includes liability for activities which are completed or
27 abandoned before the date of the occurrence which gives rise to the
28 liability.

29 "Deductible" means any arrangement under which an insurer
30 pays claims and then seeks reimbursement from the insured, except
31 that the insurer's obligation to pay claims is not contingent upon
32 reimbursement from the insured.

33 "Doing business in this State" means solicitation in this State,
34 having group members in this State, or having an office in this
35 State.

36 "Domicile" means, with respect to a purchasing group: for a
37 corporation, the state in which the purchasing group is incorporated;
38 for an unincorporated entity, the state of its principal place of
39 business.

40 "Hazardous financial condition" means that, based on its present
41 or reasonably anticipated financial condition, a risk retention group,
42 although not yet financially impaired or insolvent, is unlikely to be
43 able to meet obligations to policyholders with respect to known
44 claims and reasonably anticipated claims or to pay other obligations
45 in the normal course of business.

46 "Insurance" means primary insurance, excess insurance,
47 reinsurance, surplus lines insurance and any other arrangement for

1 shifting and distributing risk which is determined to be insurance
2 pursuant to the laws of this State.

3 "Liability" means legal liability for damages, including the cost
4 of defense, legal costs and fees, and other claims expenses, because
5 of injuries to other persons, damage to their property, or other
6 damage or loss to such other persons resulting from or arising out
7 of: any profit or non-profit business, trade, product, services,
8 including professional services, premises, or operations; or any
9 activity of any state or local government or any agency or political
10 subdivision thereof, but does not include personal risk liability or an
11 employer's liability with respect to its employees other than legal
12 liability under the federal "Employers' Liability Act," 45 U.S.C.
13 s.51 et seq.

14 "Personal risk liability" means liability for damages because of
15 injury to any person, damage to property or other loss or damage
16 resulting from any personal, familial or household responsibilities
17 or activities, rather than from the responsibilities or activities
18 referred to under the definition of "liability" in this section.

19 "Plan of operation" or a "feasibility study" means an analysis
20 which presents the expected activities and results of the risk
21 retention group, including: information sufficient to verify that its
22 members are engaged in business or activities similar or related
23 with respect to the liability to which such members are exposed by
24 virtue of any related, similar or common business, trade, product,
25 services, premises or operations; for each state in which it intends
26 to operate, the coverages, deductibles, coverage limits, rates, and
27 rating classification systems for each line of insurance the group
28 intends to offer; historical and expected loss experience of the
29 proposed members and national experience of similar exposures to
30 the extent that this experience is reasonably available; pro forma
31 financial statements and projections; appropriate opinions by a
32 qualified actuary, including the determination of minimum premium
33 or participation levels and capitalization required to commence
34 operations and to prevent a hazardous financial condition, which
35 shall be in the format and otherwise satisfy all requirements
36 established by the commissioner for loss reserve actuarial opinions
37 required to be submitted by licensed property and casualty insurers
38 in this State; identification of management, underwriting and claims
39 procedures, marketing methods, managerial oversight methods,
40 investment policies and reinsurance agreements; identification of
41 each state in which the risk retention group has obtained, or sought
42 to obtain, a charter and license, and a description of its status in
43 each such state; and such other matters as may be prescribed by the
44 commissioner of the state in which the risk retention group is
45 chartered for liability insurance companies authorized by the
46 insurance laws of that state.

47 "Product liability" means liability for damages because of any
48 personal injury, death, emotional harm, consequential economic

1 damage, or property damage, including damages resulting from the
2 loss of use of property, arising out of the manufacture, design,
3 importation, distribution, packaging, labeling, lease or sale of a
4 product. "Product liability" does not include the liability of any
5 person for those damages if the product involved was in the
6 possession of that person when the incident giving rise to the claim
7 occurred.

8 "Purchasing group" means any group which: has as one of its
9 purposes the purchase of liability insurance on a group basis;
10 purchases such insurance only for its group members and only to
11 cover their similar or related liability exposure; is composed of
12 members whose businesses or activities are similar or related with
13 respect to the liability to which members are exposed by virtue of
14 any related, similar or common business, trade, product, services,
15 premises or operations; and is domiciled in this or any other state.

16 "Retrospectively rated" means a rating plan or system, whereby
17 the premium payable by an insured is subject to a contractual
18 adjustment after the expiration of the policy based upon actual
19 incurred experience.

20 "Risk retention group" means any corporation or other limited
21 liability association: which is organized for the primary purpose of,
22 and whose primary activity consists of, assuming and spreading all,
23 or any portion, of the liability exposure of its group members;
24 which is chartered and licensed as a liability insurance company
25 and is authorized to engage in the business of insurance under the
26 laws of any state, or prior to January 1, 1985, was chartered or
27 licensed and authorized to engage in the business of insurance
28 under the laws of Bermuda or the Cayman Islands, and before that
29 date, certified to the commissioner of insurance, or other
30 appropriate official, of at least one state that it satisfied the
31 capitalization requirements of that state, except that any such group
32 shall be considered to be a risk retention group only if it has been
33 engaged in business continuously since that date and only for the
34 purpose of continuing to provide insurance to cover product
35 liability or completed operations liability, as defined in the federal
36 "Product Liability Risk Retention Act of 1981," Pub.L.97-45 (15
37 U.S.C. s.3901 et seq.), before October 27, 1986; which does not
38 exclude any person from membership in the group solely to provide
39 for members of that group a competitive advantage over such a
40 person; which has as its owners only persons who comprise the
41 membership of the risk retention group and who are provided
42 insurance by such group, or has as its sole owner an organization
43 which has as its members only persons who comprise the
44 membership of the risk retention group and its owners are the only
45 persons who comprise the membership of the risk retention group
46 and who are provided insurance by such group; whose members are
47 engaged in businesses or activities similar or related with respect to
48 the liability to which those members are exposed by virtue of any

1 related, similar or common business, trade, product, services,
2 premises or operations; whose activities do not include the
3 provision of insurance, other than liability insurance for assuming
4 and spreading all or any portion of the liability of its group
5 members, and reinsurance with respect to the similar or related
6 liability exposure of any other risk retention group, or any member
7 of any other group, which is engaged in businesses or activities so
8 that this group or member meets the requirement that members are
9 engaged in businesses or activities similar or related with respect to
10 the liability to which those members are exposed by virtue of any
11 related, similar or common business, trade, product, services,
12 premises or operations for membership in the risk retention group
13 which provides the reinsurance; and the name of which includes the
14 phrase "risk retention group."

15 "Self-insured retention" means any fund or other arrangement to
16 pay claims other than by an insurer, or any arrangement under
17 which an insurer has no obligation to pay claims on behalf of an
18 insured if it is not reimbursed by the insured.

19 "Similar insurance source" means an insurer authorized or
20 admitted to do business in this State or a non-authorized surplus
21 lines insurer eligible to do business in this State.

22 "Special risk" means a commercial lines insurance risk as
23 specified on a list promulgated by the commissioner, which is of an
24 unusual nature or high loss hazard or is difficult to place or rate, or
25 which is excess or umbrella, or which is eligible for export; or a
26 commercial lines insurance risk, other than a medical malpractice
27 liability insurance risk as set forth under P.L.1982, c.114
28 (C.17:29AA-1 et seq.), which produces a minimum annual premium
29 in excess of \$10,000. Additions or deletions to the list promulgated
30 may be made by the commissioner without a hearing upon notice to
31 all licensed insurers.

32 "State" means this State, any other state of the United States or
33 the District of Columbia.

34 (cf: P.L.1993, c.240, s.2)

35

36 6. This act shall take effect on the first day of the seventh
37 month next following enactment, but the Commissioner of Banking
38 and Insurance may take any anticipatory administrative action in
39 advance thereof as shall be necessary for the implementation of this
40 act.

41

42

43

STATEMENT

44

45 This bill revises the approval process for rate changes applicable
46 to medical malpractice liability insurance.

47 Under the bill, the Commissioner of Banking and Insurance shall
48 prescribe by regulation a designated range of annual rate change,

1 which shall be an increase or decrease of between not less than 5%
2 and not more than 15%. The commissioner may also determine,
3 pursuant to regulation, the categories, subcategories, specialties,
4 and subspecialties of health care provider to which the application
5 of the designated range shall apply.

6 Any rate, supplementary rate information, or change or
7 amendment thereof, filed by an insurer or rating organization which
8 proposes a rate change within this designated range shall become
9 effective not less than 30 days after the filing. However,
10 notwithstanding this arrangement, only one filing by an insurer or
11 rating organization of a proposed rate change within the designated
12 range may take effect within any 12-month period without the
13 express approval of the commissioner.

14 Any filing by an insurer or rating organization proposing a rate
15 change which exceeds the designated range, or proposing an
16 additional rate change within this range during any 12-month
17 period, shall be subject to prior approval by the commissioner
18 pursuant to section 14 of P.L.1944, c.27 (C.17:29A-14) before
19 becoming effective.

20 Based on the revision of the rate change approval process by the
21 bill, medical malpractice liability insurance risks producing an
22 annual premium in excess of \$10,000 shall no longer be
23 automatically deemed a "special risk" subject to the "special risk"
24 rate approval process set forth under section 12 of P.L.1982, c.114
25 (C.17:29AA-12). Instead, the provisions of the bill shall apply to
26 any filing on medical malpractice liability insurance risks for a rate
27 change.