

PUBLIC NOTICE

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Medical Malpractice Liability Insurance Premium Assistance Fund – Premium Subsidy for 2005

The Department of Banking and Insurance (“Department”) is issuing this public notice as required by N.J.S.A. 17:30D-28 et seq. and N.J.A.C. 11:27-7 regarding the determination of eligibility for a premium subsidy for 2005 (payable in 2006) from the Medical Malpractice Liability Insurance Premium Assistance Fund (the “Fund”) in accordance with N.J.S.A. 17:30D-30a(2) and N.J.A.C. 11:27-7.5. The background of the Fund, and applicable statute and rules, are discussed below.

The New Jersey Medical Care Access and Responsibility and Patients First Act, P.L. 2004, c.17 (the “Act”), provided for changes to the medical malpractice liability system to ensure that the residents of this State have 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 to be obtained through assessments on various parties, as set forth in N.J.S.A. 17:30-29. The 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 are to 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 to provide procedures 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.

The Department is issuing this Public Notice pursuant to N.J.A.C. 11:27-7.5, which sets forth the methodology and procedures for the determination of the class or classes of practitioners and health care providers eligible for the subsidy by specialty or subspecialty, and for providing subsidies to eligible practitioners and providers.

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, has, for purposes of the subsidy for calendar year 2005, made a preliminary determination that access to care for particular specialties and subspecialties is threatened.

The Department made a final determination with respect to practitioners and healthcare providers eligible for the 2004 subsidy (distributed in 2005) as set forth in Order No. A05-122, issued June 29, 2005. In that Order the Commissioner provided that practitioners and healthcare providers whose primary practice area was in one the following specialties and subspecialties were eligible to apply for a subsidy from the Fund for 2004:

- 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.

As was the case with the prior year's subsidy, in assessing whether access to care in certain specialties and subspecialties is threatened, the Department has considered information from various sources, premium data from medical malpractice insurers, as well as information from individual providers, provider trade associations, and the New Jersey Department of Health and Senior Services. Similarly, when considering whether access to care in a particular specialty was so significantly threatened so as to warrant a determination that practitioners in that specialty would be deemed eligible for the subsidy, the Department recognized the limited amount of funds available for distribution and that the greater the number of classes 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 effect of the subsidy. Such a result would be contrary to the intent of the Legislature in enacting the Act.

Based upon its review of available information it appears that increases in the average base rates for coverage in those specialties deemed eligible for the 2004 premium subsidy continued to occur in 2005. Thus, the current data does not indicate any reduction in the deleterious effect of the high cost of medical malpractice insurance in those specialties upon access to care in those specialties. In addition, the Department has, to date, received no persuasive evidence that access to care is significantly threatened in other specialties or that the threat to adequate access to the specialties deemed eligible for the 2004 premium subsidy has significantly abated. Accordingly, the Department has made a preliminary determination, absent data to suggest otherwise, and subject to change based upon receipt of additional data and further analysis, that access to care is threatened for the same specialties and subspecialties as were eligible for a subsidy for 2004 as set forth above.

The Department also notes that it is developing proposed amendments to N.J.A.C. 11:27-7.7 in response to criticism of the amounts of the subsidies distributed to qualifying practitioners in the eligible classes for 2004. The proposed amendments will provide that, 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 in an eligible class relative to the average expenditure by practitioners in the other eligible classes. The formula utilized to determine the proportional amounts shall be described in the Order issued pursuant to N.J.A.C. 11:27-7.5(f)2. This approach is designed to help ensure that eligible practitioners receive subsidies proportionate to their expenditures as a class for medical malpractice liability insurance.

It should be noted that the three classes identified herein as eligible to apply for a subsidy constitute a preliminary list. In addition to commenting on the merits of these preliminary determinations, any interested party, including any group of specialists not included in the list, may submit information to the Department which they believe establishes that access to care in that specialty or subspecialty is so seriously threatened as to warrant its members being deemed eligible for the subsidy.

In accordance with N.J.A.C. 11:27-7.5(f), this Public Notice shall be 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 shall also be posted on the Department's website: www.njdobi.org. In addition, this Public Notice shall be published in the New Jersey Register. Interested parties shall have 30 days from the date of posting the Notice on the Department's website, February 17, 2006, to provide written comments on the Department's preliminary determination on the classes of specialties and subspecialties proposed to be eligible to apply for a subsidy as set forth above. Accordingly, interested parties may submit written comments by March 20, 2006 to:

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All comments received are considered to be public records. In accordance with N.J.A.C. 11:27-7.5(f)2, after giving due consideration to any comments received, the Commissioner shall, in consultation with the Commissioner of the Department of Health and Human Services, thereafter

issue an Order establishing the classes of practitioners and providers eligible to receive the 2005 subsidy.

2/17/06
Date

/s/ Donald Bryan
Donald Bryan
Acting Commissioner

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