

CHAPTER 248

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

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

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

C.17:29AA-3 Definitions.

3. As used in this act:

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

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

- (2) Title insurance;

- (3) Mortgage guaranty insurance;

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

- (5) Any policy or contract of reinsurance, other than joint reinsurance to the extent provided for under section 22 of P.L.1982, c.114 (C.17:29AA-22);

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

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

- (8) Insurance issued by hospital service corporations, medical service corporations and health service corporations; and

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

- b. "Commissioner" means the Commissioner of Banking and Insurance.

- c. "Department" means the Department of Banking and Insurance.

- d. "Insurer" means any person, corporation, association, joint underwriting association subject to section 22 of P.L.1982, c.114 (C.17:29AA-22), partnership or company licensed under the laws of this State to transact the business of insurance in this State.

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

- f. "Rate" means the unit charge by which the measure of exposure or the amount of insurance specified in a policy of insurance or covered thereunder is multiplied to determine the premium.

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

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

- i. "Reasonable degree of competition" means that degree of competition which would tend to produce rates that are not excessive, inadequate, or unfairly discriminatory, or forms

that are not unfair, inequitable, misleading or contrary to law, as determined by the commissioner.

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

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

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

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

C.17:29AA-5 Filing of rates, supplementary rate information changes, amendments.

5. a. Notwithstanding any other law to the contrary, every authorized and admitted insurer and every rating organization shall file with the commissioner all rates and supplementary rate information and all changes and amendments thereof made by it for use in this State not later than 30 days after becoming effective, except with respect to medical malpractice liability insurance rate changes as set forth in section 3 of P.L.2009, c.248 (C.17:29AA-5.1).

b. This section shall not apply to special risks except as provided in section 12 of P.L.1982, c.114 (C.17:29AA-12).

C.17:29AA-5.1 Annual rate change for medical malpractice liability insurance.

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

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

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

b. In prescribing the designated range of annual rate change, the commissioner may consider the availability and affordability of medical malpractice liability insurance for different categories, subcategories, specialties, and subspecialties of health care provider in relation to the capitalization and reserve requirements necessary to ensure the solvency of the insurers. The commissioner may also consider current data relating to the frequency and

severity of medical malpractice claims, and trends in the cost of investigating, defending and settling claims.

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

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

C.17:29AA-13 Order from commissioner relative to compliance with standards.

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

b. (Deleted by amendment, P.L.2009, c.248)

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

C.17:47A-2 Definitions.

2. As used in this act:

"Commissioner" means the Commissioner of Banking and Insurance.

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

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

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

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

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

"Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance and any other arrangement for shifting and distributing risk which is determined to be insurance pursuant to the laws of this State.

"Liability" means legal liability for damages, including the cost of defense, legal costs and fees, and other claims expenses, because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of: any profit or non-profit business, trade, product, services, including professional services,

premises, or operations; or any activity of any state or local government or any agency or political subdivision thereof, but does not include personal risk liability or an employer's liability with respect to its employees other than legal liability under the federal "Employers' Liability Act," 45 U.S.C. s.51 et seq.

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

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

"Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage, including damages resulting from the loss of use of property, arising out of the manufacture, design, importation, distribution, packaging, labeling, lease or sale of a product. "Product liability" does not include the liability of any person for those damages if the product involved was in the possession of that person when the incident giving rise to the claim occurred.

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

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

"Risk retention group" means any corporation or other limited liability association: which is organized for the primary purpose of, and whose primary activity consists of, assuming and spreading all, or any portion, of the liability exposure of its group members; which is chartered and licensed as a liability insurance company and is authorized to engage in the business of insurance under the laws of any state, or prior to January 1, 1985, was chartered

or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands, and before that date, certified to the commissioner of insurance, or other appropriate official, of at least one state that it satisfied the capitalization requirements of that state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as defined in the federal "Product Liability Risk Retention Act of 1981," Pub.L.97-45 (15 U.S.C. s.3901 et seq.), before October 27, 1986; which does not exclude any person from membership in the group solely to provide for members of that group a competitive advantage over such a person; which has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group, or has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group and its owners are the only persons who comprise the membership of the risk retention group and who are provided insurance by such group; whose members are engaged in businesses or activities similar or related with respect to the liability to which those members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; whose activities do not include the provision of insurance, other than liability insurance for assuming and spreading all or any portion of the liability of its group members, and reinsurance with respect to the similar or related liability exposure of any other risk retention group, or any member of any other group, which is engaged in businesses or activities so that this group or member meets the requirement that members are engaged in businesses or activities similar or related with respect to the liability to which those members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations for membership in the risk retention group which provides the reinsurance; and the name of which includes the phrase "risk retention group."

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

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

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

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

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

Approved January 16, 2010.