

RULES AND REGULATIONS

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 113]

Medical Malpractice Insurance

The Insurance Department (Department), by this order, deletes §§ 113.41—113.43, as set forth in Annex A under the authority of the act of July 3, 1986 (P. L. 396, No. 86) (Act 86) (40 P. S. § 3403) and the Health Care Services Malpractice Act (Act 111) (40 P. S. §§ 1301.101—1301.1006). Notice of proposed rulemaking is omitted in accordance with section 204(2) and (3) of the act of July 31, 1968 (P. L. 769, No. 240) (CDL) (45 P. S. § 1204(2) and (3)).

Section 113.41 required that an insurance company licensed to write casualty insurance in this Commonwealth and intending to cancel or not renew a policy covering medical malpractice insurance give notice of the intention in writing to the Department at least 30 days prior to giving formal notice to the insured. Sections 113.42 and 113.43 required that the notice to the Department state the reason for the cancellation and direct where the notice should be sent.

The sections were initially adopted in 1969. However, in 1975, Act 111 was enacted. That statute requires that the Department receive notice of cancellation prior to its becoming effective.

Thus, Act 111 differs in two material respects from the sections. First, under Act 111, notice needs to be sent to the Department for midterm cancellations only (and not nonrenewals). Second, notice to the Department under Act 111 need not be sent any earlier than the insured's notice (in contrast to the regulation's requirement of 30 days' advance notice).

When Act 111 was enacted in 1975, there was an availability crisis in the medical malpractice insurance market. Thus, at that time, the Department deemed it appropriate to continue the regulations. However, availability in the medical malpractice market has been stable for some time, and the Commissioner has determined that it is no longer necessary that the Commissioner be advised in advance of cancellations, or that the Commissioner be advised of policy nonrenewals.

Notwithstanding deletion of these sections, the Department will continue to require that cancellation notices be sent to the Department in accordance with section 1002 of Act 111 (40 P. S. § 1301.1002). Further, nonrenewal notices must continue to be provided to insureds as required by Act 86 (40 P. S. § 3403).

The Department has notified the medical malpractice insurers in this Commonwealth of the deletion of the sections. Section 204(2) of the CDL provides that an agency may omit proposed rulemaking when all persons subject to the administrative regulation or change therein are named therein and are personally served with notice of the repeal of a rulemaking.

Notice of proposed rulemaking may also be omitted when notice of the rulemaking would be impracticable and unnecessary. See section 204(3) of the CDL. The Commissioner finds that the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) are impracticable and unnecessary in

this instance. The deletion of §§ 113.41—113.43 will eliminate the requirement that medical malpractice notices be given to the Department 30 days in advance of notice to the insured, thus removing a regulatory burden on the affected parties. The deletion does not adversely affect insureds or diminish the Department's authority to challenge illegal policy terminations. Therefore, the Commissioner does not believe it is necessary or practicable to invite and consider comments from interested parties.

Fiscal Impact

There will be a positive fiscal impact on the Department by deletion of these sections because the Department will no longer need to receive, review or store nonrenewal notices. Further, the deletion will lessen costs to the insurers who will no longer need to mail the nonrenewal notices to the Department.

Paperwork

The deletion of these sections will have no effect on paperwork for the Department. Entities affected by these sections will have a reduced paperwork burden because they will no longer need to generate a nonrenewal notice to send to this Commissioner.

Affected Parties

The deletion of these sections will affect casualty insurers who are licensed to sell medical malpractice insurance in this Commonwealth.

Effectiveness/Sunset Date

The rulemaking will become effective upon publication in the *Pennsylvania Bulletin*. No sunset date has been assigned.

Contact Person

The person to contact for information on this matter is Carolyn Montgomery, Director, Bureau of Consumer Services, Insurance Department, 1321 Strawberry Square, Harrisburg, PA 17120, (717) 783-2153.

Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), the Department submitted a copy of the rulemaking with proposed rulemaking omitted on December 4, 1995, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. On the same date, the rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732.1—732.506). In accordance with section 5(c) of the Regulatory Review Act, the rulemaking was deemed approved by the Senate Banking and Insurance Committee on December 24, 1995, and deemed approved by the House Insurance Committee on December 24, 1995. IRRC met on January 3, 1996, and approved the rulemaking.

Findings

The Commissioner finds that there is good cause to forego public notice of the intention to delete §§ 113.41—113.43 because the affected parties will be notified of the deletion and public comment is unnecessary and impracticable under section 204(2) and (3) of the CDL. Deleting

these sections merely eliminates the Department's requirement that medical malpractice insurers provide the Department with 30 days notice in advance of notice to insureds of cancellations and nonrenewals of medical malpractice insurance policies. Further, deleting these sections removes a regulatory requirement without adversely affecting the interests of any insurance consumer or the Department's enforcement powers.

Order

The Commissioner, acting under the authority of Acts 86 and 111, orders that:

(a) The regulations of the Department, 31 Pa. Code Chapter 113, are amended by deleting §§ 113.41—113.43 to read as set forth in Annex A.

(b) The Department shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to form and legality as required by law.

(c) The Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon its publication in the *Pennsylvania Bulletin*.

LINDA S. KAISER,
Insurance Commissioner

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 25 Pa.B. 284 (January 20, 1996).)

Fiscal Note: 11-126. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART III. MISCELLANEOUS PROVISIONS

Subchapter D. MEDICAL MALPRACTICE INSURANCE

§§ 113.41—113.43. (Reserved).

[Pa.B. Doc. No. 96-73. Filed for public inspection January 19, 1996, 9:00 a.m.]
