

PROPOSED RULEMAKING

INSURANCE DEPARTMENT

[31 PA. CODE CH. 118]

Discounting Medical Malpractice Loss Reserves

The Insurance Department (Department) proposes to amend §§ 118.1—118.3 and 118.6 to read as set forth in Annex A. The proposal is made under the authority of The Insurance Company Law of 1921 (40 P. S. §§ 341—999); The Insurance Department Act of 1921 (40 P. S. §§ 1—321); and sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412).

Purpose

Chapter 118 was initially promulgated to establish procedural and reporting requirements and restrictions on the discounting of medical malpractice loss reserves. This proposed rulemaking amends Chapter 118 to be consistent with current actuarial practice and economic conditions.

Explanation of Regulatory Changes

Section 118.1 (relating to definitions) is being updated to define terms not previously defined in the chapter.

Section 118.2 (relating to reporting and data collection requirements) is being revised to refer to applicable sections of The Insurance Department Act of 1921 rather than the entire act.

Section 118.3 (relating to restrictions on discounting loss reserves) is being revised to include two new provisions. The first provision will prohibit insurers from discounting loss reserves or loss adjustment expense reserves on all policies with a January 1, 2001, or later effective date. The second provision will prohibit insurers from discounting of loss reserves or loss adjustment expense reserves after December 31, 2010. The Department believes that the elimination of discounting is consistent with the authorizing statute and will ensure that proper reserves are maintained for future claims. In January 2001, the National Association of Insurance Commissioners (NAIC) will require all insurers to follow the recently adopted Statements of Statutory Accounting Principles which specifically prohibits discounting of medical malpractice reserves unless the insurer is allowed to do so by statute or regulation or requests a permitted practice from the Department (regulatory authority). In addition, many states do not permit discounting of loss reserves, therefore, the additional provisions will not create a hardship on the insurers engaged in the business of medical malpractice insurance. The Department also believes that allowing insurers to phase out the booked discounts over a 10-year period is in the best interest of all involved. This section is also being revised to refer to applicable sections of The Insurance Department Act of 1921 rather than the entire act.

Section 118.6 (relating to increased loss reserves and loss adjustment expense reserves) is being revised to refer to applicable sections of The Insurance Department Act of 1921 rather than the entire act.

Fiscal Impact

There is no fiscal impact as a result of the proposed rulemaking.

Paperwork

The proposed rulemaking will affect all licensed medical malpractice insurers domiciled in this Commonwealth.

Effectiveness/Sunset Date

The rulemaking will become effective upon final publication in the *Pennsylvania Bulletin*. Because the rulemaking proposes to amend the chapter with restrictions, a sunset date of December 31, 2010, has been assigned.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to psalvato@ins.state.pa.us or faxed to (717) 772-1969.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 11, 2000, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. In addition to the submitted proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 10 days after the close of the Committees' review. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Department, the Governor and the General Assembly to review these objections before final publication of the regulations.

M. DIANE KOKEN,
Insurance Commissioner

Fiscal Note: 11-197. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART VII. PROPERTY, FIRE AND CASUALTY INSURANCE

CHAPTER 118. DISCOUNTING OF MEDICAL MALPRACTICE LOSS RESERVES

§ 118.1. Definitions.

(a) The definitions utilized in Chapter 116 (relating to discounting of worker's compensation loss reserves) are incorporated for use in this chapter except that language utilizing the [terms] term "worker's compensation" shall be amended for use in this chapter utilizing the [terms] term "medical malpractice."

* * * * *

(d) Other definitions:

Act—The Insurance Department Act of 1921 (40 P. S. §§ 1—297-4).

Commissioner—The Insurance Commissioner of the Commonwealth

Department—The Insurance Department of the Commonwealth

§ 118.2. Reporting and data collection requirements.

For loss reserves established by insurance companies under sections 312—316 of [**The Insurance Department Act of one thousand nine hundred and twenty-one**] the act (40 P. S. §§ 111—115), a company is permitted to discount the medical malpractice reserves to their present value if the company complies with the following requirements. The insurance company shall:

* * * * *

§ 118.3. Restrictions on discounting loss reserves.

The discounting of loss reserves is subject to the following limitations:

(1) The loss reserves discounted to present value in accordance with this chapter may not be less than those

required in accordance with section 313(b) of [**The Insurance Department Act of one thousand nine hundred and twenty-one**] the act (40 P. S. § 112(b)).

* * * * *

(4) An insurer may not discount loss reserves or loss adjustment expense reserves for policies with an effective date on or after January 1, 2001.

(5) An insurer may not discount loss reserves or loss adjustment expense reserves after December 31, 2010.

§ 118.6. Increased loss reserves and loss adjustment expense reserves.

Under section 316 of [**The Insurance Department Act of one thousand nine hundred and twenty-one**] the act (40 P. S. § 115), the Commissioner may require an insurance company to restate its loss reserves or its allocated loss adjustment expense reserves by reducing or eliminating the discount if the Commissioner determines it is necessary to insure that reserves are established at an adequate level.

[Pa.B. Doc. No. 00-1802. Filed for public inspection October 20, 2000, 9:00 a.m.]
