

**CHAPTER 118. DISCOUNTING OF
MEDICAL MALPRACTICE LOSS RESERVES**

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Authority

The provisions of this Chapter 118 issued under The Insurance Department Act of 1921 (40 P. S. §§ 1—321); The Insurance Company Law of 1921 (40 P. S. §§ 341—991); and sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412), unless otherwise noted.

Source

The provisions of this Chapter 118 adopted November 30, 1990, effective December 1, 1990, 20 Pa.B. 5930, unless otherwise noted.

§ 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 term "worker's compensation" shall be amended for use in this chapter utilizing the term "medical malpractice."

(b) For purposes of this chapter, the definition of "insurance company" in § 116.1 (relating to definitions) also includes the Pennsylvania Professional Liability Joint Underwriting Association, an insurance entity created under section 801 of the Health Care Services Malpractice Act (40 P. S. § 1301.801).

(c) The term "independent actuary" as used in § 118.4(a) (relating to actuarial certification) means a fellow or associate of the Casualty Actuarial Society with appropriate experience in responsible actuarial work, including medical malpractice, who is not an officer, director or employee of the insurer whose reserves he is certifying.

(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.

Source

The provisions of this § 118.1 amended June 15, 2001, effective June 16, 2001, 31 Pa.B. 3191. Immediately preceding text appears at serial page (265031).

§ 118.2. Reporting and data collection requirements.

For loss reserves established by insurance companies under sections 312—316 of 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:

- (1) File an annual actuarial certification of its medical malpractice loss reserves and loss adjustment expense reserves with the Department simultaneously with the filing of the company's annual statement.
- (2) Provide a written notice to the Department stating its intent to maintain separate data regarding the company's loss payment patterns for allocated loss adjustment expenses and losses. This data shall be regularly compiled and submitted to the Department upon request.
- (3) Comply with existing annual statement instructions for reporting loss and loss adjustment expense reserves including completion of supplemental Schedule P, Part 4C of the annual statement.
- (4) File with its annual statement a description of the underlying assumptions for the calculation of the discount to present value of its loss reserves and allocated loss adjustment expense reserves.

Source

The provisions of this § 118.2 amended June 15, 2001, effective June 16, 2001, 31 Pa.B. 3191. Immediately preceding text appears at serial pages (265031) to (265032).

§ 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 act (40 P. S. § 112(b)).
- (2) The maximum rate of interest which an insurer may assume for purposes of discounting is 6%.
- (3) An insurer may request an exception to the maximum interest rate in paragraph (2) if the insurer can demonstrate to the satisfaction of the Commissioner that its investment yield justifies a higher interest rate assumption. The Commissioner may require the insurer to submit additional documentation to support its request for approval of a higher interest rate assumption. The Commissioner will act upon requests for exceptions made under this paragraph within 90 days of the date the request is received by the Insurance Department.
- (4) An insurer may not discount loss reserves or loss adjustment expense reserves for policies with an effective date on or after June 16, 2001.
- (5) An insurer may not discount loss reserves or loss adjustment expense reserves after December 31, 2010.

Source

The provisions of this § 118.3 amended June 15, 2001, effective June 16, 2001, 31 Pa.B. 3190. Immediately preceding text appears at serial page (265032).

§ 118.4. Actuarial certification.

(a) The actuarial certification required in accordance with this chapter shall be prepared by an independent actuary and filed by the insurer with its annual statement.

(b) The actuarial certification shall be filed each year in which the insurer discounts its loss reserves.

(c) The actuarial certification shall include the opinion of an independent actuary with respect to the following:

(1) The adequacy of medical malpractice loss reserves on an undiscounted basis.

(2) The sufficiency of the investment yield on invested assets to fund the discount.

(3) The reasonableness of the matching of the invested assets and loss reserves attributable to the medical malpractice business to provide an adequate income stream to fund the discount.

Cross References

This section cited in 31 Pa. Code § 118.1 (relating to definitions); and 31 Pa. Code § 118.5 (relating to reserves for loss adjustment expenses).

§ 118.5. Reserves for loss adjustment expenses.

(a) Loss adjustment expense reserves shall be calculated in accordance with the following standards:

(1) Insurance companies are not permitted to discount loss adjustment expense reserves which are not allocable to specific claims.

(2) Insurance companies are permitted to discount loss adjustment expense reserves which are allocable to specific claims if:

(i) The company demonstrates, to the satisfaction of the Commissioner, the validity of the assumptions underlying the calculation of the reserves.

(ii) The actuarial certification which includes the opinion of an independent actuary with respect to the criteria in § 118.4 (relating to actuarial certification) is applicable to the loss adjustment expense reserves as well as the loss reserves.

(b) In evaluating an insurance company's request to discount allocated loss adjustment expense reserves, the Commissioner will consider the company's specific loss adjustment expense payment pattern and the interest rate assumption.

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

Under section 316 of 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.

Source

The provisions of this § 118.6 amended June 15, 2001, effective June 16, 2001, 31 Pa.B. 3190. Immediately preceding text appears at serial page (265033).

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