

**CHAPTER 245. EMERGENCY SURCHARGE**

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**Authority**

The provisions of this Chapter 245 issued under section 701 of the Health Care Services Malpractice Act (40 P.S. § 1301.701), unless otherwise noted.

**Source**

The provisions of this Chapter 245 adopted December 20, 1985, effective December 21, 1985, 15 Pa.B. 4492, unless otherwise noted.

**§ 245.1. Purpose.**

The purpose of this chapter is to establish uniform procedures to be followed by basic coverage insurance carriers and health care providers in the billing, collection and remittance of emergency surcharge monies if an emergency surcharge is levied by the Commissioner under the authority granted in section 701(e) of the act (40 P.S. § 1301.701(e)).

**§ 245.2. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Health Care Services Malpractice Act (40 P.S. §§ 1301.101—1301.1006).

*Carrier's annual premium*—For each inforce policy as of August 31 of the emergency surcharge year, the 12 month premium calculated by using the rating factors for the risk as of August 31 of the emergency surcharge year and applying the rates in effect as of the policyholder's most recent previous annual anniversary date. If the policy has a 6 month policy period, the rate is twice such rate; if the policy has a 3 month policy period, the rate is four times such rate. For policies of other terms, the rate shall be calculated on a similar basis.

*Commissioner*—The Insurance Commissioner of the Commonwealth.

*Department*—The Insurance Department of the Commonwealth.

*Emergency surcharge year*—The calendar year during which the Commissioner has determined an emergency surcharge to be necessary.

*Fund*—The Medical Professional Liability Catastrophe Loss Fund.

*Inforce policy*—A policy which provides basic coverage insurance to a policyholder for an incident on August 31 of the emergency surcharge year. If the policy provides occurrence type coverages, the policy is considered inforce if the policy includes coverage for incidents occurring on August 31 of the emergency surcharge year. If the policy provides claims made type coverage, the policy is considered inforce if the policy includes coverage for incidents reported on August 31 of the emergency surcharge year. For the purpose of determining inforce policies or exposures:

(i) Expired claims made policies which have been endorsed with a reporting endorsement—tail coverage—may not constitute an inforce policy as of August 31 of the emergency surcharge year.

(ii) In the case of inforce occurrence policies which have been endorsed to provide prior acts coverage, the prior acts portion may not constitute a part of an inforce policy as of August 31 of the emergency surcharge year.

*Inforce self-insurance plan*—An approved self-insurance plan in accordance with section 701 of the act (40 P.S. § 1301.701) providing protection for an incident occurring on August 31 of the emergency surcharge year.

### § 245.3. Applicability.

(a) Within 15 days of the date of the Commissioner's written request, the following information shall be reported to the Commissioner in writing:

(1) Insurance carriers writing medical malpractice coverage on a Pennsylvania health care provider, as defined by the act, shall record the policy underwriting information in sufficient detail to identify the individual policyholder, the inforce policy as of August 31 of each year and the corresponding carrier's annual premium for each policyholder.

(2) Each self-insured health care provider shall make available to the Fund sufficient details for the Fund to identify the Pennsylvania health care providers covered by an inforce self-insurance plan as of August 31 of each year.

(b) The emergency surcharge will be billed to and paid by health care providers who have an inforce policy or inforce self-insurance plan covered by the Fund as of August 31 of the emergency surcharge year. The emergency surcharge rate will be levied on the carrier's annual premium for each inforce policy as of August 31 of the emergency surcharge year. The emergency surcharge rate will also be levied on the premium annually calculated by the Fund for each inforce self-insurance plan as of August 31 of the emergency surcharge year.

(c) Changes in policy information shall be handled as follows:

(1) Changes in inforce policy information recorded by the carrier on or after September 1 of the emergency surcharge year may not be the basis to recalculate the individual policyholder's emergency surcharge. If, however, the health care provider can demonstrate that the carrier misrepresented a material fact, intentionally omitted or entered false information, or failed to act in good faith, the carrier shall recalculate the emergency surcharge and refund the over-

payment, if any. If the carrier can demonstrate that the health care provider misrepresented a material fact, intentionally omitted or entered false information, or failed to act in good faith, the carrier shall recalculate the emergency surcharge and bill the additional emergency surcharge.

(2) A change in the inforce self-insurance plan information recorded by the self-insured health care provider on or after September 1 of the emergency surcharge year may not be the basis to recalculate the emergency surcharge levied on the self-insured health care provider.

#### § 245.4. Notice and amounts of surcharge.

If the Commissioner determines a surcharge is necessary, he will publish notice of the rate of the emergency surcharge in the *Pennsylvania Bulletin* as soon as a decision to levy a surcharge is made. If notice is not published on or before September 30 of the emergency surcharge year, insurers and the Fund will be notified directly in writing by the Department. Failure of the Department to publish a notice in the *Pennsylvania Bulletin* on or before September 30 of any year may not relieve the insurer of the duty to collect and remit the surcharge under this chapter.

#### Cross References

This section cited in 31 Pa. Code § 245.5 (relating to billing of emergency surcharge).

#### § 245.5. Billing of emergency surcharge.

(a) Each basic coverage insurance carrier shall bill its insured health care providers the appropriate emergency surcharge amounts within 15 days after notification as provided in § 245.4 (relating to notice and amounts of surcharge).

(b) The Fund will bill self-insured health care providers the appropriate emergency surcharge amounts within 15 days after notification as provided in § 245.4.

#### § 245.6. Remittance of emergency surcharge amounts.

(a) Health care providers shall remit emergency surcharge payments to their insurance carrier or, in the case of self-insureds, directly to the Fund within 30 days of being notified of the amount due and payable.

(b) By December 1, the carrier shall remit to the Fund emergency surcharge amounts received to date. By December 15, the carrier shall remit to the Fund emergency surcharge amounts received from December 1 to December 15. Thereafter, the carrier shall remit to the Fund emergency surcharge amounts received on or after December 15 in accordance with the monthly reporting relationship established with the Fund under § 242.6 (relating to reporting forms and procedures).

**Cross References**

This section cited in 31 Pa. Code § 245.7 (relating to reporting forms); and 31 Pa. Code § 245.8 (relating to compliance).

**§ 245.7. Reporting forms.**

The appropriate reporting form as required by § 242.6 (relating to reporting forms and procedures) shall be identified as emergency surcharge and submitted to the Fund with the emergency surcharge amounts. If preparation of the appropriate reporting form would delay remittance of the emergency surcharge amounts beyond the remittance schedule as set forth in § 245.6(b) (relating to remittance of emergency surcharge amounts), the emergency surcharge amounts shall be remitted immediately and the appropriate form shall be submitted as soon thereafter as possible.

**§ 245.8. Compliance.**

(a) The basic coverage insurance carrier shall promptly notify the Fund in accordance with § 245.6 (relating to remittance of emergency surcharge amounts) of the identity of those health care providers who have failed to pay the emergency surcharge.

(b) If a health care provider fails to comply with section 701(e) of the act (40 P.S. § 1301.701(e)) or this chapter, the Director of the Fund will notify the applicable licensure board for possible disciplinary action against the health care provider's license under section 701(f) of the act (40 P.S. § 1301.701(f)).

(c) A health care provider failing to pay the emergency surcharge within the time limits set forth in § 245.6 (relating to remittance of emergency surcharge amounts) may not be covered by the Fund in the event of loss.

(d) Failure of any party to act within the time required by this chapter may not relieve another party from the obligation to act under this chapter.

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