

February 2006

Re: **A New Tool for Challenging Malpractice Premium Increases**

Dear Madam or Sir:

As many health care providers in the State of New Jersey know from experience, malpractice insurance surcharges are sometimes arbitrarily imposed upon providers -- often as a result of faulty underwriting analysis and/or poor claims handling. There is presently no effective mechanism for reviewing carrier decisions to impose malpractice premium surcharges on health care providers.

On February 6, 2006, Assemblyman Upendra J. Chivukula introduced A-2424 (the "Bill") to the State of New Jersey's 212th Legislature for consideration. The Bill establishes a Medical Malpractice Liability Insurance Premium Increase Review Panel (the "Panel") within the Department of Banking and Insurance (the "DOBI"). The Panel will review individual premium surcharges that are brought to its attention via petition, as set forth in the Bill. A brief summary of the Bill is provided for your reference:

- The Panel shall be comprised of five employees of the Division of Insurance in the Department of Banking and Insurance, as appointed by the Commissioner. The individuals shall be responsible for, and experienced in, medical malpractice liability insurance claims and underwriting and the actuarial principles employed in establishing rates and rating systems relevant to property/casualty insurance generally and medical malpractice liability insurance in particular.
- The Panel shall review individual medical malpractice liability insurance premium increase petitions that are certified by the Commissioner as qualified pursuant to the following criteria:
 - (1) the individual policyholder's medical malpractice liability insurance premium has increased upon renewal in any policy period from the amount paid by that policyholder in the previous policy; and
 - (2) the individual policyholder has exhausted any and all appropriate internal review or appeal procedures of the insurance carrier with respect to the premium increase; and
 - (3) the individual policyholder can demonstrate that the premium increase is not the result of or based on claims experience or other actuarial or technical information to which the policyholder has access.
- Upon certification of a qualified petition by the Commissioner, the individual policyholder shall submit his or her petition, with all supporting documentation,

to the Panel for its consideration. The insurance carrier may also submit any supporting documentation in opposition to the petition. The Panel may request additional materials or documents from either party that it determines may be helpful to its review of the petition. The Panel may also require an oral presentation in support of, or in opposition to, the petition, as necessary or appropriate.

- The Panel shall conduct its review of the petition and submit its findings and recommendations to the Commissioner within 60 days of certification of the petition by the Commissioner or such longer time as agreed to by the parties.
- The Commissioner shall issue an order based upon the Panel's report. If the Commissioner determines that the increase in medical malpractice liability insurance premium is not in compliance with the provisions of P.L.1982, c.114 (C.17:29AA-1 et seq.), the Commissioner may order a reduction in the individual premium under review, in an amount as determined by the Commissioner pursuant to a formula established by regulation.
- The Commissioner shall publish information concerning the Panel on the DOBI's website and may also require medical malpractice liability insurance carriers doing business in this State to notify their policyholders of the Panel's procedures.

The Bill has been referred to the Assembly Financial Institutions and Insurance Committee. We encourage you to read the Bill and follow its progression through the legislative process. There may be a public meeting or other opportunity for providers to make their voices heard. If the Bill is ultimately signed into law, it will be a tool in the hands of providers to make insurance carriers more accountable for their decisions to increase malpractice premiums.

Whether you intend to support the Bill as is, recommend amendments or oppose its passage altogether, A-2424 is worth watching in the weeks and months ahead. A copy of the Bill can be obtained by visiting the website of the New Jersey Legislature at www.njleg.state.nj.us .