

Bulletin 90

CHANGES IN INDIANA'S MEDICAL MALPRACTICE ACT

November 10, 1998

The Commissioner of the Department of Insurance, as Administrator of the Indiana Patient's Compensation Fund, hereby issues this Bulletin in response to the changes brought about by 1998's Senate Enrolled Act 390 (SEA 390), Public Law #111-1998. Initially, the Commissioner reminds all interested parties that the Indiana Medical Malpractice Act was, as of July 1, 1998, recodified and moved from Indiana Code s 27-1-1 et seq. to Indiana Code s 34-18-1-1 et seq.

A change effective upon passage was the increase of the minimum surcharge from \$25.00 to \$100.00. Other significant changes are effective on July 1, 1999. For acts of malpractice occurring on or after July 1, 1999, the total amount recoverable by the claimant rises to One Million Two Hundred Fifty Thousand Dollars (\$1,250,000). The underlying health care provider's limits of liability per occurrence will increase from One Hundred Thousand Dollars (\$100,000) to Two Hundred Fifty Thousand Dollars (\$250,000). Insurance policies that are already in effect on July 1, 1999 should be endorsed to increase the limits of liability. Also, the endorsements should take into account the new surcharge calculation. Canceling and rewriting to achieve a July 1, 1999 start date, while not prohibited, is **strongly discouraged**.

As of July 1, 1999, three categories of surcharge are created under the new law: surcharge for hospitals licensed under Indiana Code s 16-21, surcharge for physicians as defined by Indiana Code s 25-22.5, and surcharge for all other providers. Pursuant to SEA 390, the Department has retained the services of an actuarial firm to calculate the surcharge for physicians and surgeons, and such surcharge will be published in the Indiana Register on January 1, 1999. These rates, based upon physician specialties, grouped in classes, will be reviewed on a yearly basis. The actuaries have also created a new calculation that all insurers will apply to calculate the surcharge for hospitals licensed pursuant to Indiana Code s 16-21. This calculation will be published in the Indiana Register prior to July 1, 1999. For all other qualified health care providers, surcharge as of July 1, 1999 will be 100% of the underlying premium. In 2001, the Commissioner of Insurance will retain an actuary to determine if 100% is excessive or insufficient, based on the Patient's Compensation Fund's loss history for these particular health care providers. Recalculation of the surcharge percentage, if necessary, will then be effective July 1, 2001.

Insurance carriers in Indiana should file new rates, based upon the increased primary limits, no later than February 1, 1999. In addition, Indiana Code s 27-1-13-7 has been amended to require that, effective July 1, 1999, all medical professional policies include a provision allowing the Insurer to settle the liability of an insured without the insured's consent when a medical review panel issues a unanimous opinion that the insured failed to comply with the appropriate standard of care as charged in the complaint. Such policy language, in the form of an Indiana Amendatory Endorsement, should also be filed no later than February 1, 1999.

The Department recognizes the magnitude of these changes, and will strive to be as flexible as possible during implementation. However, exceptions cannot be made to statutory deadlines, mandates or requirements imposed for compliance with SEA 390.

SEA 390 also creates a limited exception to the traditional ninety (90) day filing rule. The Commissioner anticipates that requests for exceptions will be rare and filed only when the insurer bears full responsibility for any untimely filing. In addition to the financial penalties imposed for untimely filings, the Commissioner intends to thoroughly review and investigate requests for exceptions to determine whether they are indicative of patterns of insurer conduct which might require remedial action.

Finally, the Department of Insurance and the Patient's Compensation Fund wish to remind all insurance carriers that Indiana Code s 34-18-4-4 requires that individuals who are members of partnerships and/or professional corporations must establish financial responsibility **separate and apart** from that partnership or professional corporation. The Department interprets this to require separate policies and separate limits of liability. This should eliminate any confusion regarding this requirement.

The Department will strive to keep its website updated with all changes, required forms, and other information. You may access it at www.state.in.us/idoi and we encourage all companies to make use of the website information.

Sally McCarty
Insurance Commissioner

Withdrawn