

TITLE 230– DEPARTMENT OF BUSINESS REGULATION

CHAPTER 20 – INSURANCE

SUBCHAPTER 10 – Medical Malpractice Insurance

PART 1 - Medical Malpractice Joint Underwriting Association

1.1 Authority

This Regulation is promulgated pursuant to R.I. Gen. Laws §§ 27-16-2.6, 42-14-2.3, 42-14.1-1 and 2 and 42-35-3.

1.2 Applicability and Purpose

- A. The purpose of this Part is to provide for medical malpractice insurance in Rhode Island including a residual market for those risks that are unable to procure coverage from competitive market insurers.
- B. By this Part the Department implements R.I. Gen. Laws § 42-14.1-2(a) requiring licensed healthcare facilities and medical or dental professionals to obtain and be covered by professional liability insurance for claims of bodily injury or death arising out of malpractice, professional error, or mistake.
- C. By this Part the Department implements the provisions of R.I. Gen. Laws § 42-14.1-2 allowing certain entities to self-insure. All persons and entities not granted permission to self-insure by this Part must be covered by professional liability insurance issued by a licensed insurer, or an approved surplus lines insurer or through a program established by a hospital affiliated with an accredited medical school in compliance with R.I. Gen. Laws § 27-16-2.6.

1.3 Definitions

- A. As used in this Regulation:
 - 1. “Active Health Care Professional” means a health care professional who, as part of his/her professional practice, provides treatment directly or indirectly to patients in exchange for remuneration.
 - 2. “Department” means the Rhode Island Department of Business Regulation, Insurance Division.
 - 3. "Director" means the Director of the Department of Business Regulation of the State of Rhode Island or his or her designee.

4. "Health Care Facility" means, for purposes of §§ 1.5, 1.6 and 1.7 of this Part, any licensed health care facility as defined by R.I. Gen. Laws § 23-17-2.
5. "Incidental coverage" means any other type of liability insurance covering activities directly related to the continued and efficient delivery of health care that would normally be available and underwritten under a comprehensive general liability form of insurance, except liabilities that may arise out of the ownership or use of any motor vehicles and workers compensation insurance.
6. "Medical Malpractice Insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering or failing to render professional service by healthcare facilities and medical or dental professionals.
7. "MMJUA" means the Medical Malpractice Joint Underwriting Association of Rhode Island established pursuant to the provisions of this Part.
8. "Medical or Dental Professional" means, for purposes of R.I. Gen. Laws § 42-14.1-2 and §§ 1.5, 1.6 and 1.7 of this Part, any physician or dentist licensed under the General Laws of Rhode Island.
9. "Net direct premiums" means gross direct premiums written on personal injury liability insurance (as defined in R.I. Gen. Laws § 27-9-2) including the liability component of multiple peril package policies as computed by the Department, less all premiums and dividends credited or returned to policyholders or the unused or unabsorbed portions of premium deposits.
10. "NAIC" means the National Association of Insurance Commissioners.
11. "Provider of Health Care" means, for purposes of § 1.4 of this Part means
 - a. any licensed physician, hospital or other licensed health care provider as defined in the General Laws of Rhode Island; and
 - b. any other group, type or category of individual or health related facility that the Department determines, with or without a hearing, to be necessary for the continued delivery of health care in Rhode Island.
12. "Teaching Hospital" means a hospital affiliated with an accredited medical school which has the right to implement and maintain an indemnity/self-insurance program as recognized by R.I. Gen. Laws § 27-16-2.6.

1.4 Medical Malpractice Joint Underwriting Association of Rhode Island

A. Creation

1. The MMJUA is hereby created, consisting of all insurers authorized to write, within this state on a direct basis, personal injury liability insurance as defined in R.I. Gen. Laws § 27-9-2, including insurers covering such perils in multiple peril package policies. Every such insurer shall be a member of the MMJUA and shall remain a member as a condition of its authority to continue to transact such kinds of insurance in this State.
2. The purpose of the MMJUA shall be to continue to provide a market for medical malpractice insurance on a self-supporting basis.
3. The MMJUA shall continue to underwrite medical malpractice insurance without interruption under the programs approved under Emergency Regulation XXI (21) ("Emergency Regulation") promulgated on June 16, 1975, including all policies and obligations assumed thereunder. The MMJUA shall also be authorized to underwrite incidental coverages for any provider of health care but only if such provider of health care shall be insured by the MMJUA for medical malpractice.
4. The MMJUA need not be the exclusive agency through which medical malpractice insurance may be written in this state. Any insurer authorized to write medical malpractice insurance in this State or any approved surplus lines insurer shall be allowed to do so subject to the provisions of Rhode Island General Laws and promulgated regulations.
5. The MMJUA shall, pursuant to the provisions of this Part and the plan of operation with respect to medical malpractice insurance, have the power on behalf of its members:
 - a. to issue, or to cause to be issued, policies of insurance to applicants, including incidental coverages and subject to limits as specified in the plan of operation but not to exceed one (1) million dollars for each claimant under one (1) policy in any one (1) year and three (3) million dollars for all claimants under one (1) policy in any one (1) year;
 - b. to underwrite such insurance and to adjust and pay losses with respect thereto, or to appoint service companies to perform those functions;
 - c. to assume reinsurance from its members; and
 - d. to reinsure its risks in whole or in part.

B. Plan of Operation

1. The plan of operation of the MMJUA submitted to the Department under the Emergency Regulation shall stand as approved for the MMJUA and shall serve as the accepted plan for the purpose of this Part subject to § 1.4(H) of this Part relating to directors.
2. The plan of operation shall continue to provide for economic, fair and non-discriminatory administration and for the prompt and efficient availability of medical malpractice insurance and incidental coverages and shall contain other provisions including, but not limited to, preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the MMJUA, assessment of members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers or other servicing arrangements and procedures for determining amounts of insurance to be provided by the MMJUA
3. Amendments to the plan of operation may be made by the directors of the MMJUA, subject to the approval of the Department, or shall be made at the direction of the Department.

C. Policy Forms and Rates

1. All policies issued by the MMJUA shall be on an annual basis unless sooner terminated in accordance with the provisions of this Part. All such policies shall be issued subject to the group retrospective rating plan and the stabilization reserve fund authorized by this Part. Policies may be written on a "claims made" or "occurrence" basis. No policy form shall be used by the MMJUA unless it has been filed with and approved by the Department.
2. Cancellation of the MMJUA's policies shall be governed by the General Laws of Rhode Island, except that the MMJUA may also cancel any of its policies in the event of non-payment of any stabilization reserve fund charges by mailing or delivering to the insured at the address shown on the policy written notice stating when not less than ten (10) days thereafter cancellation shall be effective.
3. The rates, rating plans, rating rules, rating classifications and territories applicable to the insurance written by the MMJUA and statistics relating thereto shall be subject to R.I. Gen. Laws § 27-9-1 *et seq.*, giving due consideration to the past and prospective loss and expense experience for such insurance written and to be written in this state, trends in the frequency and severity of losses, the investment income of the MMJUA, and such other information as the Department may require. All rates shall

be on an actuarially sound basis, giving due consideration to the group retrospective rating plan and the stabilization reserve fund, and shall be calculated to be self-supporting.

4. All policies issued by the MMJUA shall be subject to a nonprofit group retrospective rating plan to be approved by the Department under which the final premium for all policyholders of the MMJUA, as a group, will be equal to the administrative expenses, loss and loss adjustment expense and taxes, plus a reasonable allowance for contingencies and servicing. Policyholders shall be given full credit for all investment income, net of expenses and a reasonable management fee on policyholder supplied funds. The standard premium (before retrospective adjustment) for each policy issued by the MMJUA shall be established for portions of the policy period coinciding with the MMJUA's fiscal year on the basis of the MMJUA's rates, rating plan, rating rules, rating classifications and territories then in effect. The maximum final premium for all policyholders of the MMJUA, as a group shall be limited as provided in § 1.4(E) of this Part.
5. The Department shall examine the business of the MMJUA as set forth in § 1.4(K) of this Part to make certain that the group retrospective rating plan is being operated in a manner consistent with this Part. If the Department finds that it is not being so operated, the Department shall issue an order to the MMJUA, specifying in what respects its operation is deficient and stating what corrective action shall be taken.
6. The MMJUA shall certify to the Department the estimated amount of any deficit remaining after the stabilization reserve fund has been exhausted in payment of the maximum final premium for all policyholders of the MMJUA. Within sixty (60) days after such certification the Department shall authorize the members of the MMJUA to commence recoupment of their respective shares of the deficit by one of the following procedures:
 - a. applying a surcharge to be determined by the MMJUA at a rate not to exceed one (1%) percent of the annual premiums on future policies affording those kinds of insurance which form the basis for their participation in the MMJUA, under procedures established by the MMJUA, or
 - b. deducting their share of the deficit from past or future taxes due the State of Rhode Island.
7. The MMJUA shall amend the amount of its certification of deficit to the Department as the values of its incurred losses become finalized and the members of the MMJUA shall amend their recoupment procedure accordingly. This Section and any authorizations hereunder shall only apply to medical malpractice insurance and no other forms of insurance.

8. In the event that sufficient funds are not available for the sound financial operation of the MMJUA, pending recoupment as provided in § 1.4(C)(6) of this Part, all members shall, on a temporary basis contribute to the financial requirements of the MMJUA in the manner provided for in § 1.4(G) of this Part. Any such contribution shall be reimbursed to the members by recoupment as provided in § 1.4(C)(6) of this Part.

D. Stabilization Reserve Fund

1. There is hereby created a Stabilization Reserve Fund. The Fund shall be administered by the Department. All investment income of the Stabilization Reserve Fund, less all expenses of administering the Fund, shall be credited annually to the Underwriting Fund. All funds received by the Stabilization Reserve Fund, together with all income therefrom, less all expenses of administering the Fund, are to be held in trust and used to replenish the Underwriting Fund if and when necessary in the sole discretion of the Department to enable the Underwriting Fund to pay its claims and expenses and to pay return premiums under the Group Retrospective Rating Plan. Policyholders shall be given full credit for all Stabilization Reserve Fund income, net of expenses, under the Group Retrospective Rating Plan. Funds will be transferred from the Stabilization Reserve Fund to the Underwriting Fund only for the following purposes:
 - a. To reimburse the Underwriting Fund for any expenses paid by the Underwriting Fund which in the sole discretion of the Department are properly chargeable to the Stabilization Reserve Fund;
 - b. To replenish the Underwriting Fund if and when necessary in the sole discretion of the Department to enable the Underwriting Fund to pay its claims and expenses and return premiums under the Group Retrospective Rating Plan;
 - c. If any monies remain in the Fund after all retrospective premium charges have been paid, such monies shall be returned to policyholders under procedures authorized by the Department.

E. Group Retrospective Rating Plan

1. This Group Retrospective Rating Plan shall apply to all policies issued by the MMJUA on or after June 16, 1975.
2. Definitions.
 - a. Actual Surplus means the amount appearing as "Surplus As Regards Policyholders", as determined in accordance with the National Association of Insurance Commissioners ("NAIC") requirements and found in the MMJUA's Annual Statement for the calendar year immediately preceding the Settlement Year.

- b. Annual Rating Period means specific policy year inclusive of all Written Premium on MMJUA policies issued or renewed between January 1 and December 31 of the respective year.
- c. Authorized Control Level means the generally accepted measure of insurer solvency as established by the NAIC and found in the MMJUA's Annual Statement.
- d. Company Action Level means an amount determined by multiplying the Authorized Control Level (found in the MMJUA's Annual Statement) times two (2).
- e. Deficit Premium means the amount by which the Final Premium exceeds the Written Premium for such Annual Rating Period.
- f. Excess Premium means the amount by which the Written Premium exceeds the Final Premium for such Annual Rating Period.
- g. Excess Surplus means the amount by which the Actual Surplus exceeds the Minimum Policyholder Surplus.
- h. Final Premium means the balance of Policyholder Experience less Net Investment Income for such Annual Rating Period.
- i. Final Settlement means the calculation of the Final Premium for each Annual Rating Period, which shall be made within each Settlement Year.
- j. Minimum Policyholder Surplus means an amount equal to the greater of:
 - 1. Seven point five (7.5) times the MMJUA's Company Action Level as set forth in the MMJUA's most recently filed Annual Statement prior to the Settlement Year, or
 - 2. Seven point five (7.5) times the average of the MMJUA's Company Action Level for the five (5) calendar years preceding the Settlement Year.
- k. Net Investment Income means the accrued investment income from the Stabilization Reserve Fund and the Underwriting Fund on the Written Premium received during the Annual Rating Period in question. Appreciation and depreciation in the value of securities held in the Stabilization Reserve Fund and the Underwriting Fund shall not be taken into account in the calculation of Net Investment Income.

- l. Policyholder Experience means the sum of all administrative expenses, including actual commission, board, bureau and association expenses, general expenses and actual expenses of the MMJUA, taxes, licenses and fees, servicing carrier expense, losses (including paid claims and the estimated amount for unpaid or undetermined claims at the end of the Annual Rating Period) and loss adjustment expenses including all paid and estimated allocated and unallocated adjustment expense.
 - m. Return Premium means the lesser of the policyholder's Written Premium or the policyholder's proportionate share of Excess Premium for such Annual Rating Period.
 - n. Settlement Year means the calendar year in which the Final Premium for an Annual Rating Period shall be calculated. The Settlement Year shall occur at the later of: Ten (10) years after the end of each Annual Rating Period or when all reported claims for such Annual Rating Period have been closed.
 - o. Written Premium: The amount paid by policyholders to the MMJUA for insurance coverage as to each Annual Rating Period.
- 3. The MMJUA shall return to its policyholders insured during each Annual Rating Period any Excess Premium computed for such Annual Rating Period. Such Excess Premium returns shall be made through the Stabilization Reserve Fund during a Settlement Year.
- 4. Upon Final Settlement, policyholders in an Annual Rating Period are eligible for a Return Premium only if:
 - a. There was Excess Premium in such Annual Rating Period;
 - b. The total of all Excess Premium and Deficit Premium Annual Rating Periods prior to the Settlement Year is positive; and
 - c. The Actual Surplus exceeds the Minimum Policyholder Surplus.
- 5. The Return Premium calculated as above shall, upon Final Settlement, be paid promptly by the MMJUA to the Stabilization Reserve Fund or at the direction of the Stabilization Reserve Fund.
- 6. Premiums returned to the Stabilization Reserve Fund pursuant to § 1.4(E)(5) of this Part, above, shall be paid to the policyholders as soon as practicable after receipt by the Stabilization Reserve Fund.
- 7. Stabilization reserve funds on policies which have been terminated at the insured's request or otherwise shall be held in trust for a period of ten (10) years from the date of termination and shall be distributed at that time or

when all reported claims against the policyholder are closed, whichever is later. Such distributions shall consist of the lesser of the policyholder's original contribution to the Stabilization Reserve Fund or the policyholder's pro rata share of the balance of the Stabilization Reserve Fund at the end of the month preceding the date of distribution. The policyholder's pro rata share of the balance of the Stabilization Reserve Fund shall be determined by multiplying the balance of the Stabilization Reserve Fund as of the end of the month preceding the date of distribution by the ratio of the policyholder's original contributions to such fund to the total original contributions to such fund by all then existing policyholders. Such distributions shall not be made if the balance of the Stabilization Reserve Fund at the end of the month preceding the date of distribution does not exceed Two Million Dollars (\$2,000,000), except this stipulation will not apply if the MMJUA has ceased to exist and has no outstanding liabilities.

8. In construing and applying this Part, all provisions shall be construed and applied so as to provide for the equitable return of any surplus funds earned by both funds of the MMJUA from underwriting and investment activities to MMJUA policyholders in accordance with § 1.4(C)(4) of this Part.

F. Procedures

1. Any provider of health care shall, on or after the effective date of the plan of operation, be entitled to apply to the MMJUA for medical malpractice insurance and incidental coverage. Such application may be made on behalf of an applicant by a broker or agent authorized by the applicant.
2. If the MMJUA determines that the applicant meets the underwriting standards of the MMJUA as prescribed in the plan of operation and there is no unpaid, uncontested premium due from the applicant for prior insurance (as shown by the insured having failed to make written objection to premium charges within thirty (30) days after billing), then the MMJUA, upon receipt of the premium or such portion thereof as is prescribed in the plan of operation, shall cause to be issued a policy or policies of insurance.

G. Participation

1. All insurers which are members of the MMJUA shall participate in its writings, expenses, servicing allowance, management fees and losses in the proportion that the net direct premiums of each such member (excluding that portion of premiums attributable to the operation of the MMJUA) written during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the MMJUA. Each insurer's participation in the MMJUA shall be determined annually on the basis of such net direct premiums written during the

preceding calendar year, as reported in the annual statements and other reports filed by the insurer with the Department.

H. Directors

1. The MMJUA shall be governed by a board of eleven (11) directors. Seven (7) directors shall represent member companies and be elected annually by cumulative voting by the members of the MMJUA, with each member having one vote. The remaining four (4) directors shall be appointed annually by the Department. All four (4) directors shall be representatives of health care providers nominated by the Rhode Island Medical Society and the Hospital Association of Rhode Island. The Director of the Department, or his or her designee, serves on the Board in an ex officio capacity. The annual meeting of the board of directors shall be the anniversary of the original enactment of this Part. Directors shall serve until their successors are duly elected or appointed as the case may be.

I. Appeals and Judicial Reviews

1. Any applicant to the MMJUA, or any person insured pursuant to this Part, or their representatives, or any affected insurer, may appeal to the Director within thirty (30) days after any ruling, action or decision by or on behalf of the MMJUA, with respect to those items the plan of operation defines as appealable matters.
2. All orders of the Director made pursuant to this Part shall be subject to judicial review as provided in the R.I. Gen. Laws § 42-35-15.

J. Annual Statements

1. The MMJUA shall file in the office of the Department annually on or before the first day of March, a statement which shall contain information with respect to its transactions, condition, operations and affairs during the preceding year. Such statement shall contain such matters and information as are prescribed and shall be in such form as is approved by the Department. The Department may, at any time, require the MMJUA to furnish additional information with respect to its transactions, conditions or any matter connected therewith considered to be material and of assistance in evaluating the scope, operation and experience of the MMJUA.

K. Examinations

1. It is the duty of the Department, at least every five (5) years, to make an examination of the financial condition and methods of doing business of the MMJUA. The examination shall be performed, and the associated costs shall be borne by the MMJUA, in accordance with R.I. Gen. Laws § 27-13.1-1 *et seq.*

L. Privileged Communications

1. There shall be no liability on the part of, and no cause of action of any nature shall arise against the MMJUA, the Director or his or her authorized representatives or any other person or organization, for any statements made in good faith by them during any proceedings or concerning any matters within the scope of this Part.

M. Public Officers or Employees

1. No member of the board of directors of the Stabilization Reserve Fund who is otherwise a public officer or employee shall suffer a forfeiture of his or her office or employment or any loss or diminution in the rights and privileges appertaining thereto, by reason of membership on the board of directors of the Stabilization Reserve Fund.

1.5 Medical Malpractice Insurance Minimum Limits

- A. All healthcare facilities and active medical or dental professionals shall carry medical malpractice insurance coverage with minimum limits of one million dollars (\$1,000,000) for claims arising out of the same professional service and three million dollars (\$3,000,000) in the aggregate. Medical or dental professionals may also satisfy this requirement by securing indemnification coverage under a program established in compliance with R.I. Gen. Laws § 27-16-2.6 or from a self-insured entity approved by the Department pursuant to § 1.7 of this Part.
- B. To qualify under this section the insurance policy must be issued by an insurer licensed to write medical malpractice insurance in Rhode Island or by a surplus lines insurer or by a self-insurer authorized by the Department pursuant to § 1.7 of this Part or the coverage may be provided by an indemnification agreement under a program established in compliance with R.I. Gen. Laws § 27-16-2.6.
- C. Any licensed medical or dental professional may comply with this Part by inclusion under a policy of insurance issued to such medical or dental professional's employer or affiliate. In addition, any licensed medical or dental professional employed by a physician's practice affiliated with a teaching hospital may comply with this Part by inclusion under an indemnification agreement issued by such teaching hospital under a program established in compliance with R.I. Gen. Laws § 27-16-2.6.
- D. All medical malpractice insurance policies shall cover the legal liability of the insured for loss, damage, or expense incident to claims of bodily injury or death arising out of malpractice, professional error, or mistake.
- E. Rates for all medical malpractice insurance shall not be excessive, inadequate or unfairly discriminatory and shall be actuarially justified.

1.6 Requirements of Medical Malpractice Insurance Policies

- A. Insurers issuing medical malpractice insurance policies covering risks which are required to carry medical malpractice insurance by the provisions of R.I. Gen. Laws § 42-14.1-2 shall issue policies that comply with the following minimum requirements. This section does not apply to policies issued excess to a primary policy
1. Policy limits shall be in a minimum of one million dollars (\$1,000,000) for claims arising out of the same professional service and three million dollars (\$3,000,000) in the aggregate
 2. Policies shall not include any deductible in excess of ten thousand (\$10,000) per claim.
 3. All medical malpractice insurance policies shall cover the legal liability of the insured for loss, damage, or expense incident to claims of bodily injury or death arising out of malpractice, professional error, or mistake.
 4. Rates for all medical malpractice insurance shall not be excessive, inadequate or unfairly discriminatory and shall be actuarially justified.

1.7 Requirements for Medical Malpractice Self-Insurance

- A. In order to qualify to self-insure an entity must either:
1. Qualify as a hospital affiliated with an accredited medical school that satisfies the requirements of R.I. Gen. Laws § 27-16-2.6; or
 2. Obtain permission of the Department of Business to self-insure. The following requirements apply to entities seeking permission to self-insure:
 - a. The entity shall make a filing with the Department fully describing the self-insurance program.
 - b. The self-insurance program must be provided through a captive insurer or other approved self-insurance vehicle fully licensed and subject to the authority of the Department or other acceptable domiciliary jurisdiction.
 - c. The coverage provided by the self-insurance vehicle must meet the requirements of § 1.6 of this Part.
 - d. The entity must agree to file, on an annual basis on or before June 1 of each year, an audited certified financial statement and actuarial projections as to the soundness of its reserving as well as any other financial information requested by the Department.

- e. The entity shall notify the Department of its intent to discontinue its self-insurance program ninety (90) days prior to its termination.
 - f. The entity shall provide whatever further information is requested by the Department.
- B. Nothing in this Part shall prevent the self-insurance vehicles from obtaining reinsurance in whole or in part.
- C. Employees and Affiliates
 - 1. An entity that obtains permission pursuant to this section may include within that self-insurance program
 - a. health care facilities which are under common control with the entity, or
 - b. medical or dental professionals which provide health care services within the scope of their employment by that entity or who have entered into an agreement with the entity to participate in a common indemnity program.
 - 2. An entity that satisfies the requirements of R.I. Gen. Laws § 27-16-2.6 may indemnify employees and affiliates within that program.
- D. Nothing in this Part shall prevent the entity from partially insuring a portion of the risk.
 - 1. If a hospital chooses to partially insure and partially self-insure, that fact should be set forth in the annual filing to the Department specifying the portions insured and self-insured.
 - 2. All of the requirements listed in this section must be met for the self-insured portion of the risk.

1.8 Severability

If any Section, term, or provision of this Part should be adjudged invalid for any reason, that judgment should not effect, impair, or invalidate any remaining Section, term, or provision, which shall remain in full force and effect.

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**TITLE 230 - DEPARTMENT OF BUSINESS REGULATION (INCLUDES
THE OFFICE OF THE HEALTH INSURANCE COMMISSIONER)**

CHAPTER 20 - INSURANCE

SUBCHAPTER 10 - MEDICAL MALPRACTICE INSURANCE

**PART 1 - MEDICAL MALPRACTICE JOINT UNDERWRITING ASSOCIATION
(FORMERLY INSURANCE REGULATION 21) (230-RICR-20-10-1)**

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