

NEW YORK STATE
INSURANCE DEPARTMENT

TWENTY-SEVENTH AMENDMENT TO REGULATION NO. 101
(11 NYCRR 70)

MEDICAL MALPRACTICE INSURANCE RATE MODIFICATIONS,
PROVISIONAL RATES, REQUIRED POLICY PROVISIONS
AND AVAILABILITY OF ADDITIONAL COVERAGES

I, Gregory V. Serio, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201, 301, 1113(a)(13) and (14), 3426, 3436, 5504, 5907, 6302, 6303 and Article 23 of the Insurance Law, Part JJ of Chapter 407 of the Laws of 1999 and Chapter 147 of the Laws of 2000, do hereby promulgate the following Twenty-Seventh Amendment to Part 70 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation 101), to take effect upon publication in the State Register, to apply to policies issued or renewed on or after July 1, 2000, to read as follows:

Section 70.8(h)(5), (6), and (7) is hereby amended to read as follows:

(5) Each insurer shall collect and retain or remit any required surcharges, in accordance with the criteria set forth herein, and shall be responsible for determining, with regard to any insured for which it provides primary coverage on or after July 1, 1989, the identity of each insurer that had provided that insured primary coverage with a policy inception or renewal date on or after July 1, 1985, and on or before June 30, [1998] 1999:

(i) If the insured has had coverage with a policy inception or renewal date on or after July 1, 1985, and on or before June 30, [1998] 1999, from an insurer that is entitled to a surcharge, in accordance with section [70.21(c)] 70.22(c) of this Part, the surcharge shall be collected from that insured by the insurer that provides coverage on or after July 1, [1998] 1999, and shall then be retained by, or remitted to, the insurer entitled thereto.

(ii) If the insured had coverage with a policy inception or renewal date on or after July 1, 1985, and on or before June 30, [1998] 1999, from two or more insurers entitled to a surcharge in accordance with section [70.21(c)] 70.22(c) of this Part, the surcharge shall be collected from that insured by the insurer that provides the coverage on and after July 1, [1998] 1999, and shall then be

retained by, or remitted to, the insurers entitled thereto in proportion to the number of policy inception or renewal dates for each insurer on or after July 1, 1985, and on or before June 30, [1998] 1999.

(iii) If the insured had coverage with a policy inception or renewal date on or after July 1, 1985, and on or before June 30, [1998] 1999, only with insurers not entitled to a surcharge in accordance with section [70.21(c)] 70.22(c) of this Part, no surcharge shall be collected from that insured.

(iv) If the insured did not have coverage on or after July 1, 1985, and on or before June 30, [1998] 1999, and is insured on or after July 1, [1998] 1999, with an insurer entitled to a surcharge in accordance with section [70.21(c)] 70.22(c) of this Part, a surcharge shall be collected from the insured by that insurer, and then remitted to the following insurers in the following proportions:

Medical Liability Mutual Insurance Company	[56.60%]	<u>55.85%</u>
Physicians Reciprocal Insurers	[22.35%]	<u>20.90%</u>
[Group Council Mutual Insurance Company]		[6.00%]
Frontier Insurance Company	[5.90%]	<u>5.90%</u>
<u>Group Council Mutual Insurance Company</u>		<u>5.50%</u>
Medical Malpractice Insurance Association	[3.55%]	<u>3.45%</u>
<u>HANYS</u>		<u>2.65%</u>
Healthcare Underwriters Mutual Insurance Company	[2.60%]	<u>2.55%</u>
[Legion Insurance Company]		[1.55%]
Academic Health Professionals Insurance Association	[1.45%]	<u>2.00%</u>
<u>Legion Insurance Company</u>		<u>1.15%</u>

(v) No surcharge shall be collected from an insured with a policy inception or renewal date on or after July 1, 1985, and on or before June 30, [1995] 1996 from an insurer entitled to a surcharge in accordance with section [70.21(c)] 70.22(c) of this Part, if the insured has not been insured on or after July 1, [1995] 1996 by an insurer entitled to a surcharge.

(6) Any hospital, health maintenance organization or other institution in this state that employs or otherwise is associated with any physician who was insured by an insurer which is entitled to receive a surcharge in accordance with section [70.21(c)] 70.22(c) of this Part, having a policy

inception or renewal date on or after July 1, 1985, and on or before June 30, [1998] 1999 and which is responsible for responding in damages for liability arising out of such physician's practice of medicine, shall continue to ascertain the amount of the surcharge to be remitted and remit such amount to that insurer in accordance with [section 9 of Chapter 147 of the Laws of 1999] section 10 of Part JJ of Chapter 407 of the Laws of 1999.

(7) Amounts received for a surcharge account shall be allocated in accordance with any deficiencies recorded in the reports required by paragraph (2) of this subsection. If no deficiencies exist, the amount shall be paid directly into a segregated surcharge account in the proportion that premiums for that year bear to the total premiums for all policies with policy inception or renewal dates on or after July 1, 1985, and on or before June 30, [1999] 2000. All surcharge revenues collected by an insurer required to be remitted to another insurer shall be remitted within ninety (90) days of receipt by the first insurer.

A new Section 70.22 is hereby added, to read as follows:

70.22 Physicians and surgeons medical malpractice policy provisions for the period commencing July 1, 2000; established rates.

(a) Section 40 of Chapter 266 of the Laws of 1986, as amended by section 10 of Part JJ of Chapter 407 of the Laws of 1999, requires the superintendent to establish rates for physicians and surgeons medical malpractice policies for the policy period July 1, 2000, through June 30, 2001, and establish a surcharge, of up to eight percent, on the rates for such medical malpractice policies for the policy period July 1, 2000, through June 30, 2001, if required to satisfy any deficiency for the policy periods July 1, 1985, through June 30, 1999.

(b) (1) Pursuant to Part JJ of Chapter 407 of the Laws of 1999, as amended by Chapter 147 of the Laws of 2000, Section 5502(c) of the Insurance Law was amended to provide for the dissolution of the Medical Malpractice Insurance Association ("MMIA") at such time and under such conditions as the Superintendent deems proper. As part of that dissolution process, MMIA ceased issuing and renewing policies effective July 1, 2000.

(2) As required by Part JJ, the New York Medical Malpractice Insurance Plan ("Plan") has been established, pursuant to 11 NYCRR 430 (Regulation 170), to provide for the equitable distribution, to authorized medical malpractice insurers writing such coverage in New York, of the insureds of MMIA and health care practitioners and facilities which are otherwise unable to secure coverage in the voluntary market following the dissolution of MMIA.

(3) Part JJ further requires that, upon initial distribution to the voluntary market, insureds of MMIA received policies with provisions and rates which are at least as favorable to the insured as those which they would have received if they were issued a renewal policy by MMIA.

(4) Therefore subdivision (d)(5) of this section contains the established rates to be used for insureds distributed through the Plan.

(c) The superintendent has reviewed the reports mandated by section 70.8(h) and former section 70.9(f) of this Part, taken into account the factors set forth for consideration in section 10 of Part JJ of Chapter 407 of the Laws of 1999, and evaluated the financial condition of insurers issuing policies of medical malpractice insurance, as reflected by examinations conducted in accordance with Section 310 of the Insurance Law. As a result of review and consideration, the superintendent has determined that a deficiency exists, in one instance, for the policy periods July 1, 1985, through June 30, 1999.

(d) Rates and surcharges for occurrence policies providing primary coverage, up to \$1 million/\$3 million, issued or renewed during the period July 1, 2000, through June 30, 2001, shall be as follows:

(1) For Academic Health Professionals Insurance Association, the rate adjustments shall be as indicated in paragraph (8) of this subdivision, which also reflects classification modifications approved by the superintendent in accordance with section 2307(a) of the Insurance Law. No surcharge shall be collected for this insurer.

(2) For Frontier Insurance Company, the rate adjustments shall be as indicated in paragraph (9) of this subdivision, which also reflects classification modifications approved by the superintendent

in accordance with section 2307(a) of the Insurance Law. No surcharge shall be collected for this insurer.

(3) For Group Council Mutual Insurance Company, rates shall be 10 percent greater than those established pursuant to section 70.21(c)(3) of this Part. In addition, a surcharge of four percent shall be collected for this insurer.

(4) For Medical Liability Mutual Insurance Company, the rate adjustments shall be as indicated in paragraph (10) of this subdivision, which also reflects classification modifications approved by the superintendent in accordance with section 2307(a) of the Insurance Law. No surcharge shall be collected for this insurer.

(5) For the Medical Malpractice Insurance Plan, the rates shall be those established for the Medical Malpractice Insurance Association pursuant to section 70.21(c)(5) of this Part, as adjusted in paragraph (11) of this subdivision, which also reflects classification modifications approved by the superintendent in accordance with section 2307(a) of the Insurance Law. No surcharge shall be collected for this insurer.

(6) For Physicians Reciprocal Insurers, the rate adjustments shall be as indicated in paragraph (12) of this subdivision. No surcharge shall be collected for this insurer.

(7) For all other insurers, rates shall be those established by paragraph (4) of this subdivision, modified by the difference between the insurer's expenses and those of the Medical Liability Mutual Insurance Company, unless the insurer can demonstrate to the satisfaction of the superintendent that another rate is appropriate. No surcharge shall be collected for any such insurer unless specifically required by the superintendent.

(8) Rate adjustments for the Academic Health Professionals Insurance Association:

Old Class	New Class	Terr. 00*	Terr. 01*	Terr. 02*	Terr. 03*	Terr. 04*	Terr. 05*	Terr. 06*
1	1	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
2	2	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
3	3	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
4	4	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
5	5	-0.2%	5.0%	5.0%	5.0%	5.0%	-0.2%	-0.3%
6	6	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
7	7	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
8	8	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
9	9	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
13	10	9.3%	15.0%	15.0%	15.0%	15.0%	9.3%	9.3%
11	11	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
10	12	-9.7%	-5.0%	-5.0%	-5.0%	-5.0%	-9.7%	-9.7%
12	13	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
14	14	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
15	15	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
16	16	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%

In addition to the above changes, 2 specialties are being moved from one classification to another as follows:

Old Class	New Class	Specialty Description
10	9	Internal Medicine (incl. Cardiac Catheterization)
12	14	Pediatrics

- * **Territory 01:** *New York, Orange, Westchester, Rockland and Sullivan Counties*
- Territory 02:** *Bronx, Kings, Queens and Richmond Counties*
- Territory 03:** *Nassau and Suffolk Counties*
- Territory 04:** *Putnam, Dutchess, Columbia, Greene and Ulster Counties*
- Territory 05:** *Erie and Niagara Counties*
- Territory 06:** *Livingston, Monroe, Ontario, Seneca, Wayne and Yates Counties*
- Territory 00:** *Remainder of State*

(9) Rate adjustments for the Frontier Insurance Company:

Old Class	New Class	Terr. 00*	Terr. 01*	Terr. 02*	Terr. 03*	Terr. 04*	Terr. 05*	Terr. 06*
1	1	1.80%	7.16%	7.16%	7.16%	7.16%	1.80%	1.80%
2	2	1.80%	7.16%	7.16%	7.16%	7.16%	1.80%	1.80%
3	3	1.80%	7.16%	7.16%	7.16%	7.16%	1.80%	1.80%
4	4	1.80%	7.16%	7.16%	7.16%	7.16%	1.80%	1.80%
5	5	6.89%	12.51%	12.51%	12.51%	12.51%	6.89%	6.89%
6	6	1.80%	7.16%	7.16%	7.16%	7.16%	1.80%	1.80%
7	7	1.80%	7.16%	7.16%	7.16%	7.16%	1.80%	1.80%
8	8	1.80%	7.16%	7.16%	7.16%	7.16%	1.80%	1.80%
9	9	1.80%	7.16%	7.16%	7.16%	7.16%	1.80%	1.80%
13	10	17.07%	23.23%	23.23%	23.23%	23.23%	17.07%	17.07%
11	11	1.80%	7.16%	7.16%	7.16%	7.16%	1.80%	1.80%
10	12	-3.29%	1.80%	1.80%	1.80%	1.80%	-3.29%	-3.29%
12	13	1.80%	7.16%	7.16%	7.16%	7.16%	1.80%	1.80%
14	14	1.80%	7.16%	7.16%	7.16%	7.16%	1.80%	1.80%
15	15	1.80%	7.16%	7.16%	7.16%	7.16%	1.80%	1.80%
16	16	1.80%	7.16%	7.16%	7.16%	7.16%	1.80%	1.80%
18	18	1.80%	7.16%	7.16%	7.16%	7.16%	1.80%	1.80%
24	24	1.80%	7.16%	7.16%	7.16%	7.16%	1.80%	1.80%

In addition to the above changes, 2 specialties are being moved from one classification to another as follows:

Old Class	New Class	Specialty Description
10	9	Internal Medicine (incl. Cardiac Catheterization)
12	14	Pediatrics

- * **Territory 01:** *New York, Orange, Westchester, Rockland and Sullivan Counties*
- Territory 02:** *Bronx, Kings, Queens and Richmond Counties*
- Territory 03:** *Nassau and Suffolk Counties*
- Territory 04:** *Putnam, Dutchess, Columbia, Greene and Ulster Counties*
- Territory 05:** *Erie and Niagara Counties*
- Territory 06:** *Livingston, Monroe, Ontario, Seneca, Wayne and Yates Counties*
- Territory 00:** *Remainder of State*

(10) Rate Adjustments for the Medical Liability Mutual Insurance Company:

Old Class	New Class	Terr. 00*	Terr. 01*	Terr. 02*	Terr. 03*	Terr. 04*	Terr. 05*	Terr. 06*
1	1	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
2	2	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
3	3	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
4	4	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
5	5	-0.2%	5.0%	5.0%	5.0%	5.0%	-0.2%	-0.3%
6	6	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
7	7	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
8	8	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
9	9	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
13	10	9.3%	15.0%	15.0%	15.0%	15.0%	9.3%	9.3%
11	11	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
10	12	-9.7%	-5.0%	-5.0%	-5.0%	-5.0%	-9.7%	-9.7%
12	13	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
14	14	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
15	15	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%
16	16	-5.0%	0.0%	0.0%	0.0%	0.0%	-5.0%	-5.0%

In addition to the above changes, 2 specialties are being moved from one classification to another as follows:

Old Class	New Class	Specialty Description
10	9	Internal Medicine (incl. Cardiac Catheterization)
12	14	Pediatrics

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- Territory 05:** *Erie and Niagara Counties*
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- Territory 00:** *Remainder of State*

(11) Rate Adjustments for the Medical Malpractice Insurance Plan:

Old Class	New Class	Terr. 00*	Terr. 01*	Terr. 02*	Terr. 03*	Terr. 04*	Terr. 05*	Terr. 06*
1	1	18.75%	25.00%	25.00%	25.00%	25.00%	18.75%	18.75%
2	2	18.75%	25.00%	25.00%	25.00%	25.00%	18.75%	18.75%
3	3	18.75%	25.00%	25.00%	25.00%	25.00%	18.75%	18.75%
4	4	18.75%	25.00%	25.00%	25.00%	25.00%	18.75%	18.75%
5	5	24.69%	31.25%	31.25%	31.25%	31.25%	24.69%	24.69%
6	6	18.75%	25.00%	25.00%	25.00%	25.00%	18.75%	18.75%
7	7	18.75%	25.00%	25.00%	25.00%	25.00%	18.75%	18.75%
8	8	18.75%	25.00%	25.00%	25.00%	25.00%	18.75%	18.75%
9	9	18.75%	25.00%	25.00%	25.00%	25.00%	18.75%	18.75%
13	10	36.56%	43.75%	43.75%	43.75%	43.75%	36.56%	36.56%
11	11	18.75%	25.00%	25.00%	25.00%	25.00%	18.75%	18.75%
10	12	12.81%	18.75%	18.75%	18.75%	18.75%	12.81%	12.81%
12	13	18.75%	25.00%	25.00%	25.00%	25.00%	18.75%	18.75%
14	14	18.75%	25.00%	25.00%	25.00%	25.00%	18.75%	18.75%
15	15	18.75%	25.00%	25.00%	25.00%	25.00%	18.75%	18.75%
16	16	18.75%	25.00%	25.00%	25.00%	25.00%	18.75%	18.75%

In addition to the above changes, 2 specialties are being moved from one classification to another as follows:

Old Class	New Class	Specialty Description
10	9	Internal Medicine (incl. Cardiac Catheterization)
12	14	Pediatrics

- * **Territory 01:** *New York, Orange, Westchester, Rockland and Sullivan Counties*
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- Territory 00:** *Remainder of State*

(12) Rate adjustments for Physicians Reciprocal Insurers (PRI):

Old Class	New Class	Terr. 00*	Terr. 01*	Terr. 02*	Terr. 03*	Terr. 04*	Terr. 05*	Terr. 06*
1A	1A	0.5%	-5.6%	0.5%	0.5%	4.4%	0.5%	0.5%
1B	1B	-4.0%	-9.7%	-4.0%	-4.0%	-0.2%	-4.0%	-4.0%
2	2	0.5%	-5.6%	0.5%	0.5%	4.4%	0.5%	0.5%
3A	3A	0.5%	-5.6%	0.5%	0.5%	4.4%	0.5%	0.5%
3B	3B	0.5%	-5.6%	0.5%	0.5%	4.4%	0.5%	0.5%
5	5	0.5%	-5.6%	0.5%	0.5%	4.4%	0.5%	0.5%
5B	5B	0.5%	-5.6%	0.5%	0.5%	4.4%	0.5%	0.5%
6C	6C	0.5%	-5.6%	0.5%	0.5%	4.4%	0.5%	0.5%
8B	6F	15.5%	8.6%	15.5%	15.5%	20.0%	15.5%	15.5%
6D	6G	0.5%	-5.6%	0.5%	0.5%	4.4%	0.5%	0.5%
8E	8E	0.5%	-5.6%	0.5%	0.5%	4.4%	0.5%	0.5%
8F	8F	0.5%	-5.6%	0.5%	0.5%	4.4%	0.5%	0.5%
8G	8G	0.5%	-5.6%	0.5%	0.5%	4.4%	0.5%	0.5%
9G	8H	11.2%	4.5%	11.2%	11.2%	15.6%	11.2%	11.2%
9F	9F	0.5%	-5.6%	0.5%	0.5%	4.4%	0.5%	0.5%
9H	9H	0.5%	-5.6%	0.5%	0.5%	4.4%	0.5%	0.5%
9I	9I	0.5%	-5.6%	0.5%	0.5%	4.4%	0.5%	0.5%
9J	9J	0.5%	-5.6%	0.5%	0.5%	4.4%	0.5%	0.5%
11	11	5.5%	-0.8%	5.5%	5.5%	9.6%	5.5%	5.5%
12	12	0.5%	-5.6%	0.5%	0.5%	4.4%	0.5%	0.5%

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- Territory 06:** *Livingston, Monroe, Ontario, Seneca, Wayne and Yates Counties*
- Territory 00:** *Remainder of State*

(e) Rates for policies providing excess coverage issued or renewed during the period July 1, 2000, through June 30, 2001, shall be as follows, and no surcharges shall be collected on these policies:

(1) For a first excess layer providing \$1 million/\$3 million of excess coverage above \$1 million/\$3 million primary coverage, and purchased directly by a physician, the rate shall be 9.4 percent of the \$1 million/\$3 million rate for primary coverage established for the Medical Malpractice Insurance Plan in accordance with subdivision (d) of this section.

(2) For a first excess layer providing \$1 million/\$3 million of excess coverage above \$1 million/\$3 million primary coverage, and purchased by a hospital in accordance with section 18 of Chapter 184 of the Laws of 1988 as amended by Chapter 147 of the Laws of 2000, the rate shall be 9.9 percent of the \$1 million/\$3 million rate for primary coverage established for the Medical Malpractice Insurance Plan in accordance with subdivision (c) of this section.

(3) For a second excess layer providing \$1 million/\$3 million of excess coverage above the underlying primary coverage and the first layer of excess coverage described in paragraph (1) or (2) of this subdivision, the rate shall be 5.0 percent of the \$1 million/\$3 million rate for primary coverage established for the Medical Malpractice Insurance Plan in accordance with subdivision (c) of this section.

(f) Claims-made primary and excess coverage rates.

(1) Claims-made coverage rate. The rate for a claims-made policy shall be the corresponding occurrence rate multiplied by the appropriate claims-made factor, as follows:

<u>Year in</u> <u>Claims-Made Program</u>	<u>Claims-Made Factor</u>
<u>First</u>	<u>31%</u>
<u>Second</u>	<u>64</u>
<u>Third</u>	<u>85</u>
<u>Fourth</u>	<u>94</u>
<u>Fifth</u>	<u>99</u>
<u>Sixth</u>	<u>102</u>
<u>Seventh</u>	<u>104</u>
<u>Eighth and Later</u>	<u>105</u>

(2) Optional Extended Reporting Period (Tail) Rates:

(i) The rate for optional tail coverage required to be offered for a claims-made policy shall be the corresponding occurrence rate multiplied by the appropriate tail factor, as follows:

<u>Number of years completed</u> <u>in Claims-Made Program</u>	<u>Tail Factor</u>
<u>One</u>	<u>74.8%</u>
<u>Two</u>	<u>122.1</u>
<u>Three</u>	<u>146.4</u>
<u>Four</u>	<u>162.4</u>
<u>Five</u>	<u>173.3</u>
<u>Six</u>	<u>181.0</u>
<u>Seven</u>	<u>186.7</u>
<u>Eight or more</u>	<u>190.6</u>

(ii) For a policy terminated on a date other than its anniversary date, the tail factor shall be obtained by interpolation, on a daily basis, between the tail factors applicable to the preceding and following policy anniversaries.

(iii) For any policy written at a reduced rate because the insured was eligible for a new-doctor discount, the tail premium shall be reduced by the percentage that the current year's rate (exclusive of any surplus contributions) was reduced as a result of such new-doctor discount.

(g) Rates for claims-made policies where the physician, while receiving coverage under a claims-made policy, changes classification or territory.

(1) When a physician insured under a claims-made policy changes either classification, territory or both, the rate applicable to such physician shall be adjusted to reflect the fact that claims made under the policy after the change could include claims for occurrences which took place under the former classification or territory. The presence of a loading for pre-paid extended reporting period coverage in the rate structure complicates what would otherwise be a relatively simple calculation, in that the amount of such loading applicable to the difference in rates before and after the change must be considered. Accordingly, all insurers should use the procedure established by section 70.14(f)(2) of this Part.

(2) All insurers providing claims-made coverage subject to this Part shall:

(i) Amend their policy applications to require the applicant to identify every insurer which previously provided coverage on a claims-made basis and to indicate if and how any classification or territory has been modified since first entry into the claims-made program.

(ii) Confirm the classification or territory information with the previous insurer or insurers.

(iii) Furnish, upon the written request of an insurer, or former or current insured, classification or territory information relative to such insured or former insured.

(3) For the purposes of this subdivision, the term "classification" shall include changes from full time to part time or part time to full time practice.

(h) Excess Coverage-Types of Policies.

(1) Pursuant to Chapter 147 of the Laws of 2000, excess coverage policies providing \$1 million/\$3 million of excess coverage above \$1 million/\$3 million of primary coverage, purchased by general hospitals on behalf of physicians, shall cover occurrences from July 1, 2000, through June 30, 2001. Accordingly, all physicians' and surgeons' medical malpractice liability insurers, and only such insurers, shall issue such an excess policy on an occurrence basis.

(2) Excess coverage policies issued or renewed on and after July 1, 2000, shall provide coverage on either an occurrence or claims-made basis, subject to paragraph (1) of this subdivision, provided that:

(i) An excess coverage policy shall be renewed on the same basis (occurrence or claims-made) as issued, except that the insured may choose to substitute claims-made for occurrence coverage.

(ii) If the insured so requests, an excess coverage policy issued by the same insurer that issued the underlying primary coverage shall be issued with the same type of coverage (occurrence or claims-made) as the primary coverage.

(iii) The provisions of section 70.7(b)(2) of this Part continue to apply to all medical malpractice liability insurers.

(i) Required Filings.

(1) No later than December 29, 2000, all physicians' medical malpractice liability insurers shall file required amended rate manual pages with the superintendent in accordance with the rates established by this Part. Insurers writing, or required to write, coverage for which rates are not

specifically established by this Part shall file proposed rates with supporting documentation by December 29, 2000.

(2) A physicians' medical malpractice liability rate filed by a rate service organization on behalf of its members and subscribers shall be established in accordance with this Part and any such organization shall make appropriate filings by December 29, 2000.

(3) The rates and rating plans for medical malpractice liability insurance issued by an insurer to a federal purchasing group and its members shall be established in accordance with the provisions of this Part, except that, if the insurer and purchasing group have complied with all applicable provisions of the Liability Risk Retention Act, 15 USC 3901 et seq, (see section 70.1(m) of this Part) and Part 301 of this Title, and if the insurer submits rates or a rating plan affording advantages, based upon the purchasing group's loss and expense experience, not afforded to other persons, the superintendent shall review such submission, and thereafter establish rates or a rating plan, as appropriate, reflecting such advantages. Any such insurer presently issuing such coverage shall file proposed rates with adequate documentation by December 29, 2000.

I, Gregory V. Serio, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is the Twenty-Seventh Amendment to 11 NYCRR 70 (Regulation 101), promulgated by me on June 1, 2001 pursuant to the authority granted by Sections 201, 301, 1113(a)(13) and (14), 3426, 3436, 5504, 5907, 6302, 6303 and Article 23 of the Insurance Law, Part JJ of Chapter 407 of the Laws of 1999 and Chapter 147 of the Laws of 2000, to take effect upon filing with the Secretary of State for policies issued or renewed on or after July 1, 2000.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed amendment was published in the State Register on April 11, 2001. No other publication or notice is required by statute.

Gregory V. Serio
Superintendent of Insurance

June 1, 2001

