

Regulatory Analysis Form

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PENNSYLVANIA REGULATORY
REVIEW COMMISSION

Cocodrilli

IRRC Number: 2085

(1) Agency

Insurance Department

(2) I.D. Number (Governor's Office Use)

11-185

(3) Short Title

Discounting Medical Malpractice Loss Reserves

(4) PA Code Cite

31 Pa. Code, Chapter 118, §§118.1-118.6

(5) Agency Contacts & Telephone Numbers

Primary Contact: Peter J. Salvatore, Regulatory Coordinator,
1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429
Secondary Contact:

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The Department proposed that Chapter 118, sections 118.1-118.6 be repealed. This regulation is no longer necessary to assure the continued availability of medical malpractice insurance via the voluntary market at the primary level. The regulation is inconsistent with current actuarial practice.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The Department proposes to repeal this regulation under the authority of the act of May 17, 1921, P.L. 682, No. 284 (40 P.S. §§341-999); the act of May 17, 1921, P.L. 789, No. 285 (40 P.S. §§1-321); and Sections 206, 506, 1501 and 1502 of the Administrative Code of 1929 (71 P.S. §§66, 186, 411 and 412).

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The Insurance Department seeks to repeal Chapter 118, §§118.1-118.6 to be consistent with the authorizing statute. Moreover, it is in the public interest to delete unnecessary regulatory requirements.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no public health, safety, environment or general welfare risks associated with this rulemaking.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The medical profession will benefit from the regulation to the extent that it will be consistent with the statute.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

There will be no adverse effects on any party as a result of the repeal of this regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The regulation applies to all insurers licensed to sell medical malpractice insurance and who do business in the Commonwealth.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Comments regarding the repeal of this regulation were not solicited from the various trade associations representing the insurance industry.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The repeal of the regulation will not have any impact on costs associated with insurance companies or the medical profession. Currently, medical malpractice carriers are allowed to discount their liabilities, if they satisfy certain minimal requirements. The repeal of this regulation will require carriers to get the Department's permission to discount liabilities. There is no cost associated with this change. However, insurers who previously discounted their medical malpractice reserves, and who fail to obtain the Department's permission to discount these reserves as they had previously, will see their surplus restated downward.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

There are no costs or savings to local governments associated with this rulemaking.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

There are no costs or savings associated to state government associated with this rulemaking. The current practice and method of reviewing financial statements will not change due to the repeal of this regulation.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. N/A

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

N/A.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.
N/A.

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

No costs or adverse effects are anticipated as a result of this regulation.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Repealing Chapter 118, §§118.1-118.6 is the most efficient method to achieve consistency with the authorizing statute. No other alternatives were considered.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No other regulatory schemes were considered. The repeal of the regulation is the most efficient method of updating the regulatory requirements.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The rule making will not put Pennsylvania at a competitive disadvantage with other states. Under the current regulation, there is an inconsistency in the financial reporting of insurance companies between companies that discount and those that don't.

The elimination of the regulation does not entirely remove a company's opportunity to discount reserves. A company will still be able to discount reserves if they request and receive the department's approval for discounting (known as a permitted practice). Effective January 1, 2001, codification will disallow reserve discounting, which is designed to place all companies throughout the country on a level financial reporting basis. However, if a company has a permitted practice from their state of domicile which allows discounting, the company will be able to show their financial statements on a discounted basis, but will need to disclose the effects the permitted practice has on the financial statements.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No public hearings or informational meetings are anticipated.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The repeal of the regulation imposes no additional paperwork requirements on the Department, the insurers, the medical profession or the general public.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The rulemaking will have no effect on special needs of affected parties.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The rulemaking will undergo a 30-day public comment period and will take effect upon approval of the final form regulation by the legislative standing committees, the Office of the Attorney General, and the Independent Regulatory Review Commission and upon final publication in the *Pennsylvania Bulletin*.

(31) Provide the schedule for continual review of the regulation.

Since this is a repeal no further review of the regulation has been scheduled.

Repeal Analysis Form

(1) Agency

Insurance Department

(2) I.D. Number (Governor's Office Use)

11- 185

(3) Short Title

Discounting Medical Malpractice Loss Reserves

(4) PA Code Cite

31 Pa. Code 118, §§118.1-118.6

(5) Agency Contact and Telephone Number:

Peter J. Salvatore, Regulatory Coordinator, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429.

(6) Type (check one)

- Proposed Rulemaking
- Final Order Adopting Regulation
- Final Order, Proposed Rulemaking Omitted

(7) Is a 120 Day Emergency Certification Attached?

- Yes: By the Governor
- Yes: By the Attorney General
- No

(8) Briefly explain in clear and non-technical language the regulation:

The Department proposed that Chapter 118, Sections 118.1-118.6 be repealed. This regulation is no longer necessary to assure the continued availability of medical malpractice insurance via the voluntary market at the primary level. The regulation is inconsistent with current actuarial practice.

(9) Briefly explain why this regulation is proposed for repeal:

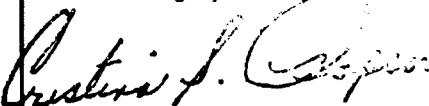
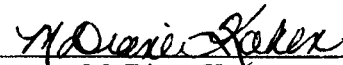
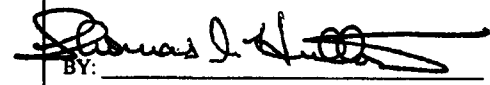
This regulation is no longer necessary to assure the continued availability of medical malpractice insurance via the voluntary market at the primary level. The regulation is inconsistent with current actuarial practice.

(10) Please list the proposed schedule for repeal noting any public comment periods:

The rulemaking will undergo a 30-day public comment period and will take effect upon approval of the final form regulation by the legislative standing committees, the Office of the Attorney General, and the Independent Regulatory Review Commission and upon final publication in the *Pennsylvania Bulletin*.

(11) State any costs and/or savings associated with the repeal:

There are no cost savings associated with this repeal.

CDL-1 FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU (Pursuant to Commonwealth Documents Law)		RECEIVED 2000 JAN 24 AM 9:49 INDEPENDENT REGULATORY REVIEW COMMISSION
# 2085		DO NOT WRITE IN THIS SPACE
Copy below is hereby approved as to form and legality. Attorney General  By _____ (Deputy Attorney General) _____ Date of Approval <input type="checkbox"/> Check if applicable. Copy not approved. Objections attached.	Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by: Insurance Department _____ (AGENCY) DOCUMENT/FISCAL NOTE NO. <u>11-185</u> DATE OF ADOPTION: _____ BY:  M. Diane Koken Insurance Commissioner TITLE: _____ (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)	Copy below is hereby approved as to form and legality. Executive or Independent Agencies  BY: _____ <u>11/22/99</u> DATE OF APPROVAL (DEPUTY GENERAL COUNSEL) (CHIEF COUNSEL, INDEPENDENT AGENCY) (STRIKE INAPPLICABLE TITLE) <input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.

Insurance Department

Notice of Proposed Rulemaking

31 PA Code, Chapter 118
§§118.1-118.6

Discounting Medical Malpractice Loss Reserves

PREAMBLE

The Insurance Department (“Department”) hereby proposes to repeal Title 31, Pennsylvania Code, Chapter 118, Sections 118.1-118.6, Discounting of Medical Malpractice Loss Reserves, as set forth in Annex A, under the authority of the act of May 17, 1921, P.L. 682, No. 284 (40 P.S. §§341-999); the act of May 17, 1921, P.L. 789, No. 285 (40 P.S. §§1-321); and Sections 206, 506, 1501 and 1502 of the Administrative Code of 1929 (71 P.S. §§66, 186, 411 and 412).

Purpose

Chapter 118 was initially promulgated to establish procedural and reporting requirements and restrictions on the discounting of medical malpractice loss reserves. This proposed rulemaking repeals Chapter 118 of Title 31 of the Pennsylvania Code because the regulation is no longer necessary to assure the continued availability of medical malpractice insurance via the voluntary market at the primary level. In addition, the regulation is inconsistent with current actuarial practice and economic conditions.

Fiscal Impact

There is no fiscal impact as a result of the repeal of this regulation.

Paperwork

The repeal of this regulation will affect all licensed medical malpractice insurers domiciled in the Commonwealth.

Effectiveness/Sunset Date

The rulemaking will become effective upon final publication in the *Pennsylvania Bulletin*. Because the rulemaking proposes to repeal the regulation, no sunset date has been assigned.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Pennsylvania Insurance Department, 1326 Strawberry Square, Harrisburg, Pennsylvania 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to psalvato@ins.state.pa.us or faxed to (717) 772-1969.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)) the agency submitted a copy of this regulation on January 24, 2000 to the Independent Regulatory

Review Commission and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. In addition to the submitted regulation, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

If the Commission has any objections to any portion of the proposed amendments, it will notify the agency within 30 days after the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act (71 P.S. §§ 745.1-745.14) specifies detailed procedures for the agency, the Governor and the General Assembly to review these objections before final publication of the regulations.

M. Diane Koken
Insurance Commissioner

CONTINUATION SHEET FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

ANNEX A

Title 31. Insurance. Part VII. Property, Fire and Casualty Insurance, Chapter 118. Discounting of Medical Malpractice Loss Reserves.

Sec.

118.1. [Definitions.] **Reserved.**

118.2. [Reporting and data collection requirements.] **Reserved.**

118.3. [Restrictions on discounting loss reserves.] **Reserved.**

118.4. [Actuarial certification.] **Reserved.**

118.5. [Reserves for loss adjustment expenses.] **Reserved.**

118.6. [Increased loss reserves and loss adjustment expense reserves.] **Reserved.**

§ 118.1. [Definitions.]

(a) The definitions utilized in Chapter 116 (relating to discounting of worker's compensation loss reserves) are incorporated for use in this chapter except that language utilizing the terms "worker's compensation" shall be amended for use in this chapter utilizing the terms "medical malpractice".

(b) For purposes of this chapter, the definition of "insurance company" in § 116.1 (relating to definitions) also includes the Pennsylvania Professional Liability Joint Underwriting Association, an insurance entity created under section 801 of the Health Care Services Malpractice Act (40 P. S. § 1301.801).

(c) The term "independent actuary" as used in § 118.4(a) (relating to actuarial certification) means a fellow or associate of the Casualty Actuarial Society with appropriate experience in responsible actuarial work, including medical malpractice, who is not an officer, director or employe of the insurer whose reserves he is certifying.] **Reserved.**

§ 118.2. [Reporting and data collection requirements.]

For loss reserves established by insurance companies under sections 312-316 of The Insurance Department Act of one thousand nine hundred and twenty-one (40 P. S. §§ 111-115), a company is permitted to discount the medical malpractice reserves to their present value if the company complies with the following requirements. The insurance company shall:

(1) File an annual actuarial certification of its medical malpractice loss reserves and loss adjustment expense reserves with the Department simultaneously with the filing of the company's annual statement.

(2) Provide a written notice to the Department stating its intent to maintain separate data regarding the company's loss payment patterns for allocated loss adjustment expenses and losses. This data shall be regularly compiled and submitted to the Department upon request.

(3) Comply with existing annual statement instructions for reporting loss and loss adjustment expense reserves including completion of supplemental Schedule P, Part 4C of the annual statement.

(4) File with its annual statement a description of the underlying assumptions for the calculation of the discount to present value of its loss reserves and allocated loss adjustment expense reserves.] **Reserved.**

§ 118.3. [Restrictions on discounting loss reserves.

The discounting of loss reserves is subject to the following limitations:

(1) The loss reserves discounted to present value in accordance with this chapter may not be less than those required in accordance with section 313(b) of The Insurance Department Act of one thousand nine hundred and twenty-one (40 P. S. § 112(b)).

(2) The maximum rate of interest which an insurer may assume for purposes of discounting is 6%.

(3) An insurer may request an exception to the maximum interest rate in paragraph (2) if the insurer can demonstrate to the satisfaction of the Commissioner that its investment yield justifies a higher interest rate assumption. The Commissioner may require the insurer to submit additional documentation to support its request for approval of a higher interest rate assumption. The Commissioner will act upon requests for exceptions made under this paragraph within 90 days of the date the request is received by the Insurance Department.] **Reserved.**

§ 118.4. [Actuarial certification.

(a) The actuarial certification required in accordance with this chapter shall be prepared by an independent actuary and filed by the insurer with its annual statement.

(b) The actuarial certification shall be filed each year in which the insurer discounts its loss reserves.

(c) The actuarial certification shall include the opinion of an independent actuary with respect to the following:

(1) The adequacy of medical malpractice loss reserves on an undiscounted basis.

(2) The sufficiency of the investment yield on invested assets to fund the discount.

(3) The reasonableness of the matching of the invested assets and loss reserves attributable to the medical malpractice business to provide an adequate income stream to fund the discount.] **Reserved.**

§ 118.5. [Reserves for loss adjustment expenses.

(a) Loss adjustment expense reserves shall be calculated in accordance with the following standards:

(1) Insurance companies are not permitted to discount loss adjustment expense reserves which are not allocable to specific claims.

(2) Insurance companies are permitted to discount loss adjustment expense reserves which are allocable to specific claims if:

(i) The company demonstrates, to the satisfaction of the Commissioner, the validity of the assumptions underlying the calculation of the reserves.

(ii) The actuarial certification which includes the opinion of an independent actuary with respect to the criteria in § 118.4 (relating to actuarial certification) is applicable to the loss adjustment expense reserves as well as the loss reserves.

(b) In evaluating an insurance company's request to discount allocated loss adjustment expense reserves, the Commissioner will consider the company's specific loss adjustment expense payment pattern and the interest rate assumption.] **Reserved.**

§ 118.6. [Increased loss reserves and loss adjustment expense reserves.

Under section 316 of The Insurance Department Act of one thousand nine hundred and twenty-one (40 P. S. § 115), the Commissioner may require an insurance company to restate its loss reserves or its allocated loss adjustment expense reserves by reducing or eliminating the discount if the Commissioner determines it is necessary to insure that reserves are established at an adequate level.] **Reserved.**



**COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT**

OFFICE OF SPECIAL PROJECTS
1326 Strawberry Square
Harrisburg, PA 17120

Phone: (717) 787-4429
Fax: (717) 705-3873
E-mail: psalvato@ins.state.pa.us

January 24, 2000

Mr. Robert Nyce
Executive Director
Independent Regulatory Review Comm.
333 Market Street
Harrisburg, PA 17120

Re: Insurance Department
Proposed Regulation No. 11-
185, Discounting Medical
Malpractice Loss Reserves

Dear Mr. Nyce:

Pursuant to Section 5(a) of the Regulatory Review Act, enclosed for your information and review is proposed regulation 31 Pa. Code, Chapter 118, Discounting Medical Malpractice Loss Reserves.

Chapter 118 was initially promulgated to establish procedural and reporting requirements and restrictions on the discounting of medical malpractice loss reserves. This rulemaking proposed to repeal Chapter 118 because the regulation is no longer necessary to assure the continued availability of medical malpractice insurance via the voluntary market at the primary level. In addition, the regulation is inconsistent with current actuarial practice and economic conditions.

If you have any questions regarding this matter, please contact me at (717) 787-4429.

Sincerely yours,

A handwritten signature in cursive script that reads "Peter J. Salvatore".

Peter J. Salvatore
Regulatory Coordinator

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

2000 JAN 24 AM 9:49

INDEPENDENT REGULATORY
REVIEW COMMISSION



I.D. NUMBER: 11-185
SUBJECT: Discounting Medical Malpractice Loss Reserves
AGENCY: DEPARTMENT OF INSURANCE

TYPE OF REGULATION

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
1-24/00	<i>Shirley Cochran</i>	HOUSE COMMITTEE ON INSURANCE
1/24/00	<i>Denise Patton</i>	SENATE COMMITTEE ON BANKING & INSURANCE
1/24/00	<i>St. Belmont</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
1/24/00	<i>C. Lee</i>	LEGISLATIVE REFERENCE BUREAU