



**COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT**

**SPECIAL PROJECTS OFFICE
1328 Strawberry Square
Harrisburg, PA 17120**

**Phone: (717) 787-4429
Fax: (717) 772-1969**

E-mail: psalvato@ins.state.pa.us

May 16, 2000

Mr. Theodore G. Otto III, Esq.
Vice President, Secretary and General Counsel
PMSLIC
777 East Park Drive
PO Box 8375
Harrisburg, PA 17105-8375

Re: Discounting Medical Malpractice Regulation

Dear Mr. Otto:

The Department reviewed the proposed language suggested by PMSLIC and has incorporated the suggestions into the proposed regulation. Enclosed is a copy of the draft rulemaking for your review and comment.

In addition to the language suggested by PMSLIC, some minor clean up of the regulation is being proposed. In order to have this effective prior to January 1, 2001 the Department needs to fast track this through the IRRC process. Therefore, I would appreciate receiving any preliminary comments or recommendations you may have on this rulemaking by May 31, 2000.

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

cc: Sarah H. Lawhorne, President and COO, PMSLIC
Annette B. Szady, Vice President, Finance
M. Diane Koken, Insurance Commissioner
S. Johnson, Deputy Commissioner
C. Szczepanski, Chief Actuary

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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.

118.2. Reporting and data collection requirements.

118.3. Restrictions on discounting loss reserves.

118.4. Actuarial certification.

118.5. Reserves for loss adjustment expenses.

118.6. Increased loss reserves and loss adjustment expense reserves.

§ 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 term[s] "worker's compensation" shall be amended for use in this chapter utilizing the term[s] "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,

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including medical malpractice, who is not an officer, director or employe of the insurer whose reserves he is certifying.

(d) Other definitions:

Act - The Insurance Department Act of 1921 (40 P.S. § 1 et seq.)

Commissioner - The Insurance Commissioner of the Commonwealth

Department - The Insurance Department of the Commonwealth

§ 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] the act (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.

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§ 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] the act (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.

(4) An insurer shall not discount loss reserves or loss adjustment expense reserves for policies with an effective date on or after January 1, 2001.

(5) An insurer may not discount loss reserves or loss adjustment expense reserves after December 31, 2010.

§ 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:

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- (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.

§ 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.

§ 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] the act (40 P. S. § 115), the Commissioner may require an insurance company to restate its loss reserves or its

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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.



PMSLIC
Doctor Owned, Doctor Run

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Tel: 717.558.7500
Toll Free: 800.445.1212
Fax: 717.558.9804
<http://www.pmslic.com>

May 19, 2000

Mr. Peter J. Salvatore
Regulatory Coordinator
Commonwealth of Pennsylvania
Insurance Department
Special Projects Office
1326 Strawberry Square
Harrisburg, PA 17120

RE: DISCOUNTING MEDICAL MALPRACTICE REGULATION

Dear Mr. Salvatore:

Thank you for your letter of May 16, 2000 in which you requested comments or recommendations regarding the proposed regulation. We appreciate the opportunity you gave us to submit language for the proposed regulation and agree with the language of the draft rulemaking.

If there is anything else we need to do, please do not hesitate to contact me.

Sincerely,

Theodore G. Otto III, Esq.
Vice President, Secretary and General Counsel

cc: Sarah H. Lawhorne, President and COO
Annette B. Szady, Vice President, Finance
M. Diane Koken, Insurance Commissioner
Stephen J. Johnson, CPA, Deputy Insurance Commissioner
Chester J. Szczepanski, Chief Actuary

ated/salvatoreltr

Original: 2154

The Insurance Federation of Pennsylvania, Inc.

RECEIVED

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INDEPENDENT REGULATORY
REVIEW COMMISSION



John R. Doubman
Secretary & Counsel

1600 Market Street
Suite 1520
Philadelphia, PA 19103
Tel: (215) 665-0500 Fax: (215) 665-0540
E-mail: mailbox@ifpenn.org

October 30, 2000

Peter J. Salvatore,
Regulatory Coordinator
Pennsylvania Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

**Re: Discounting Medical Malpractice Loss Reserves: 31
Pa. Code Chapter 118; 11-197**

Dear Mr. Salvatore:

The Insurance Federation supports the proposed regulation amending Chapter 118 to bring the procedural and reporting requirements and restrictions on discounting medical malpractice loss reserves into conformity with current actuarial practice and economic conditions. The Federation has reviewed the regulation with our interested members and we support the regulation.

Thank you for the opportunity to comment on the regulation. Feel free to call with any questions or comments.

Sincerely,

John R. Doubman

c: Robert E. Nyce, Executive Director
Independent Regulatory Review Commission

Honorable Edwin G. Holl, Chairman
Senate Banking and Insurance Committee

Honorable Nicholas A. Micozzie, Chairman
House Insurance Committee

Regulatory Analysis Form

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2000 OCT 11 PM 1:38

REVIEW COMMISSION



(1) Agency

Insurance Department

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

11-197

IRRC Number: 2154

(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 proposes that Chapter 118, sections 118.1-118.6 be amended to assure the continued availability of medical malpractice insurance via the voluntary market at the primary level and to be consistent with current actuarial practice and economic conditions. The proposed amendments will prohibit discounting on policies with an effective date of January 01, 2001 or later. The proposed amendments will also allow insurers who currently discount, to be able to run off that discounting over a 10 year period.

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

The Department proposes to amend 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).

Regulatory Analysis Form

(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 amend Chapter 118, §§118.1-118.6 to be consistent with the authorizing statute. Moreover, it is in the public interest to amend the regulation to prohibit future discounting of medical malpractice insurance to ensure that proper reserves are maintained for future claims.

(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 more consistent with the authorizing statute.

Regulatory Analysis Form

(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 amendment 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 amendment of this regulation were solicited from the various trade associations representing the insurance industry. The Pennsylvania Medical Society Liability Insurance Company (PMSLIC) was instrumental in assisting the Department with language that achieved the desired results.

(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 amendment 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 minimum requirements. The amendment of this regulation will require carriers to get the Department's permission to discount liabilities written with an effective date of January 1, 2001 or later. There is no cost associated with this change. Insurers who previously discounted their medical malpractice reserves will be permitted to discount booked reserves until December 31, 2010.

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 to state government associated with this rulemaking. The current practice and method of reviewing financial statements will not change due to the amendment of this regulation.

Regulatory Analysis Form

(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.

Amending 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 amendment 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. Only one other state (Indiana) currently has a standard practice of discounting. Under the current regulation, there is an inconsistency in the financial reporting of insurance companies between companies that discount and those that don't.

(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 amendment 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.

The Department reviews each of its regulations for continued effectiveness on a triennial basis.

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FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU

(Pursuant to Commonwealth Documents Law)

#2154

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REVIEW COMMISSION



DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to
form and legality. Attorney General

[Signature]
By
(Deputy Attorney General)

OCT 03 2000

Date of Approval

→ 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. 11-197

DATE OF ADOPTION:

BY:

[Signature]
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

[Signature]

7/25/00
DATE OF APPROVAL

(DEPUTY GENERAL COUNSEL)
~~(CHIEF COUNSEL, INDEPENDENT AGENCY)~~
(STRIKE INAPPLICABLE TITLE)

→ 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”) proposes to amend 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 amends Chapter 118 of Title 31 of the Pennsylvania Code to be consistent with current actuarial practice and economic conditions.

Explanation of Regulatory Changes

Section 118.1 (relating to definitions) is being updated to define terms not previously defined in the regulation.

Section 118.2 (relating to reporting and data collection requirements) is being revised to refer to applicable sections of the Insurance Department Act of 1921 rather than the entire act.

Section 118.3 (relating to restrictions on discounting loss reserves) is being revised to include two new provisions. The first provision will prohibit insurers from discounting loss reserves or loss adjustment expense reserves on all policies with a January 1, 2001 or later effective date. The second provision will prohibit insurers from discounting of loss reserves or loss adjustment expense reserves after December 31, 2010. The Department believes that the elimination of discounting is consistent with the authorizing statute and will ensure that proper reserves are maintained for future claims. In January 2001, the National Association of Insurance Commissioners (NAIC) will require all insurers to follow the recently adopted Statements of Statutory Accounting Principles which specifically prohibits discounting of medical malpractice reserves unless the insurer is allowed to do so by statute or regulation or requests a permitted practice from the Department (regulatory authority). In addition, many states do not permit discounting of loss reserves, therefore, the additional provisions will not create a hardship on the insurers engaged in the business of medical malpractice insurance. The Department also believes that allowing insurers to phase out the booked discounts over a 10-year period is in the best interest of all involved. This section is also being revised to refer to applicable sections of the Insurance Department Act of 1921 rather than the entire act.

Section 118.6 (relating to increased loss reserves and loss adjustment expense reserves) is being revised to refer to applicable sections of the Insurance Department Act of 1921 rather than the entire act.

Fiscal Impact

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

Paperwork

The amendment 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 amend the regulation with restrictions, a sunset date of December 31, 2010 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 October 11, 2000 to the Independent Regulatory Review Commission (IRRC) 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 IRRC has any objections to any portion of the proposed amendments, it will notify the agency within 10 days after the close of the committees' review. 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.

118.2. Reporting and data collection requirements.

118.3. Restrictions on discounting loss reserves.

118.4. Actuarial certification.

118.5. Reserves for loss adjustment expenses.

118.6. Increased loss reserves and loss adjustment expense reserves.

§ 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 term[s] "worker's compensation" shall be amended for use in this chapter utilizing the term[s] "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.

(d) Other definitions:

Act - The Insurance Department Act of 1921 (40 P.S. § 1 et seq.)

Commissioner - The Insurance Commissioner of the Commonwealth

Department - The Insurance Department of the Commonwealth

§ 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] the act (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.

§ 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] the act (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.

(4) An insurer shall not discount loss reserves or loss adjustment expense reserves for policies with an effective date on or after January 1, 2001.

(5) An insurer may not discount loss reserves or loss adjustment expense reserves after December 31, 2010.

§ 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.

§ 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.

§ 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] the act (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.



**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

October 11, 2000

Mr. Robert Nyce
Executive Director
Independent Regulatory Review Comm.
333 Market Street
Harrisburg, PA 17101

Re: Insurance Department Proposed
Regulation No. 11-197, 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 promulgated to establish procedural and reporting requirements and restrictions on the discounting of medical malpractice loss reserves. This regulation is not consistent with current actuarial practice and economic conditions. In addition, in January 2001, the National Association of Insurance Commissioners (NAIC) will require all insurers to follow the recently adopted Statements of Statutory Accounting Principles which specifically prohibits discounting of medical malpractice reserves unless the insurer is allowed to do so by statute or regulation or requests a permitted practice from the Department (regulatory authority).

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

Sincerely yours,


Peter J. Salvatore
Regulatory Coordinator

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

I.D. NUMBER: 11-197
SUBJECT: Discounting Medical Malpractice Loss Reserves
AGENCY: DEPARTMENT OF INSURANCE #2184

RECEIVED
2990 OCT 11 PH 1:38
REVIEW COMMISSION

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
10/11/00	<i>Shilo Eubank</i>	HOUSE COMMITTEE ON INSURANCE
10/11/00	<i>Bruce Mitchell</i>	SENATE COMMITTEE ON BANKING & INSURANCE
10/11/00	<i>Rita Eckert</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
10/14/00	<i>C. L. Brown</i>	LEGISLATIVE REFERENCE BUREAU

Original: 2154



PMSLIC
Doctor Owned Doctor Run
LABORATORY
REVIEW COMMISSION

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PMSLIC
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**PENNSYLVANIA
INSURANCE DEPARTMENT**

April 20, 2000

The Honorable M. Diane Koken, Esq.
Insurance Commissioner
Pennsylvania Insurance Department
13th Floor Strawberry Square
Harrisburg, PA 17120

VIA FAX AND REGULAR MAIL

RE: PROPOSED AMENDMENT TO CHAPTER 118, DISCOUNTING MEDICAL
MALPRACTICE LOSS RESERVES

Dear Commissioner Koken:

Sarah Lawhorne asked me to provide the Department some draft language to implement the agreement reached between PMSLIC and the Department regarding discounting our loss reserves. It is my understanding from Sarah that PMSLIC will be allowed to continue to discount the loss reserves on policies we have already issued or will issue during policy year 2000. The loss reserves for policies effective in year 2001 and later will not be discounted. In addition, PMSLIC has been charged with proposing a reasonable sunset date for the regulation after which time PMSLIC would no longer discount any loss reserves for any policy year.

To implement this, the existing language in 31 PA Code, Section 118 would not be deleted. There would be an amendment containing the following proposed language that could be added to section 118.3 as paragraph number 4:

"An insurer shall not discount loss reserves or loss adjustment expense reserves for policies with an effective date on or after January 1, 2001."

We would propose a ten-year sunset provision such that no discounting would be permitted after December 31, 2010.

I have taken the liberty of copying Deputy Commissioner Johnson on this correspondence, as it is my understanding that he and Sarah have had further discussions on this issue. If the proposed language or sunset date is in any way unacceptable to the Department, we

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would appreciate being notified immediately so that we could address any concerns. On behalf of PMSLIC, we would like to again thank you for your willingness to reach a mutually agreeable result.

Sincerely,



Theodore G. Otto III, Esq.
Vice President, Secretary
and General Counsel

cc: ✓ Stephen J. Johnson, CPA, Deputy Insurance Commissioner
Sarah H. Lawhorne, President and COO
Annette B. Szady, Vice President, Finance

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