

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 and 3403 (18 Del.C. §§314 & 3403)
18 DE Admin. Code 2201

FINAL

ORDER

Docket No. 2007-528

2201 Implementation of Medical Malpractice Relief Initiative Pilot Program

Proposed Regulation 2201 relating to the Medical Malpractice Relief Initiative Pilot Program was published in the *Delaware Register of Regulations* on October 1, 2007. The comment period remained open until November 5, 2007. There was no public hearing on the proposed Regulation 2201. Public notice of the proposed Regulation 2201 in the *Register of Regulations* and two newspapers of general circulation was in conformity with Delaware law.

Summary of the Evidence and Information Submitted

No public comment was received as a result of the publication of the proposed Regulation for comment.

Findings of Fact

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. The public interest is best served by the establishment of a medical malpractice relief pilot program for Delaware-domiciled captive insurance companies and Delaware-domiciled risk retention groups.
2. The public interest is best served by the existence of medical professionals of sufficient quality and quantity needed to provide services to the citizens of Delaware.
3. The public service is best served by providing funding to a pilot program in order to aid medical professionals in the purchasing of medical malpractice insurance through low or no-interest loans.

Decision and Effective Date

Based on the provisions of 18 Del.C. §§314 and 3403 and 29 Del.C. §§10113-10118 and the record in this docket, I hereby adopt Regulation 2201 to be effective on January 1, 2008.

IT IS SO ORDERED this 15th day of November 2007.

Matthew Denn
Insurance Commissioner

2201 Implementation of Medical Malpractice Relief Initiative Pilot Program

1.0 Purpose

The purpose of this section is to provide regulations governing the Medical Malpractice Relief Initiative Pilot Program established by the Fiscal Year 2007 Appropriations Act.

2.0 Authorization

These regulations are adopted in accordance with 18 Del.C. §311 and the Fiscal Year 2007 Appropriations Act.

3.0 Scope

These regulations shall govern the application of entities seeking state funding pursuant to the Medical

Malpractice Relief Initiative Pilot Program for the purpose of establishing a Delaware-domiciled risk retention and/or captive entity.

4.0 Approval

4.1 No entity shall receive funding pursuant to the Medical Malpractice Relief Initiative Pilot Program unless such entity receives the recommendation of the Delaware Insurance Commissioner and the approval of the Controller General, the Co-Chairs of the Joint Finance Committee, and Director of the Office of Management and Budget.

4.2 An entity seeking low or no interest loans pursuant to the Medical Malpractice Relief Initiative Pilot Program for the purpose of fostering the establishment of risk reduction group(s) and/or captive insurance entities shall make application to the Delaware Department of Insurance on forms provided by the Department.

4.3 The Delaware Insurance Commissioner shall review any applications submitted pursuant to these provisions and shall determine whether to recommend such applicant for receipt of Medical Malpractice Relief Initiative Pilot Program funding. The Insurance Commissioner may require any documents reasonably necessary to verify the information contained in an application.

4.4 If the Insurance Commissioner decides to recommend an applicant for funding, the Commissioner shall make a funding recommendation for such applicant to the Controller General, the Co-Chairs of the Joint Finance Committee, and the Director of the Office of Management and Budget for their final review and approval.

4.5 If the Commissioner recommends funding for the application, the Commissioner's recommendation shall include the amount and type of funding, when said funds must be repaid to the State, and any conditions to be placed on the funding award.

5.0 Requirements and Considerations for Funding Awards

5.1 No applicant for funding under the Medical Malpractice Relief Initiative Pilot Program shall be recommended for funding unless the Insurance Commissioner finds that the applicant:

5.1.1 Is organized for the purpose of increasing the availability of medical malpractice insurance and reducing the costs of medical malpractice insurance through enhanced risk management and lower administrative costs; and

5.1.2 Is a Delaware-domiciled captive insurance company licensed pursuant to 18 Del.C. §6903 or a Delaware-domiciled risk retention group chartered pursuant to 18 Del.C. §8003.

5.2 In reviewing such applications and determining whether to recommend an applicant for funding, the Insurance Commissioner shall consider all factors the Commissioner considers relevant to the success of the applicant and the protection of Delaware consumers, including but not limited to the following criteria:

5.2.1 The likelihood that receiving the funding will assist the applicant in increasing the availability of and reducing the cost of medical malpractice insurance and of increasing the predictability of such costs;

5.2.2 The need of the medical professionals who are members of the applicant for an alternative to the traditional medical malpractice insurance market;

5.2.3 The applicant's structure and business plan;

5.2.4 The number of medical professionals who are members of the applicant; and

5.2.5 The applicant's provisions for and emphasis on risk management.

6.0 Funding

Funding pursuant to this program shall be limited to low or non-interest loans, via a surplus note, letter of credit, or otherwise. Funding awards must be conditioned upon binding agreements requiring that such funds be repaid to the State.

7.0 Length of Pilot Program

The pilot portion of any program funded under this provision must be completed within 12 months of approval of these regulations.

11 DE Reg. 806 (12/01/07) (Final)