



DATE: September 11, 2017

TO: All Interested Parties

FROM: Jessica K. Altman  
Acting Insurance Commissioner

SUBJECT: Additional Medical Malpractice Basic Insurance Capacity

Under Pennsylvania's Act 13, the Medical Care Availability and Reduction of Error Act ('Fund' or 'MCARE'), basic primary professional liability insurance limits could potentially be increased in 2018 from \$500,000 to \$750,000 per claim. The increase is subject to an evaluation and analysis of the basic medical malpractice insurance coverage market capacity. A determination that additional capacity is not available would result in primary and Fund coverage limits for 2017 remaining in effect until such capacity is available in the future. The Department has previously undertaken reviews of the basic insurance coverage market capacity six times. To date, none of the prior reviews resulted in a change in the Fund coverage levels.

In 2017, the Department engaged Deloitte Consulting LLP to perform a Medical Professional Liability Basic Insurance Capacity Study as of December 31, 2016. The study reviewed information from a data call by the Department and other sources. The study evaluated market share, leverage ratios and financial strength of medical professional liability insurers in Pennsylvania. The study noted that the market share of Risk Retention Groups (RRGs) has grown substantially over the past eight years, increasing from 29% in 2008 to 37% in 2016. At the same time, admitted insurers have experienced a decline in market share from 40% to 34%. The study concluded that the increased use of non-traditional insurers, coupled with information showing net premium to surplus ratios for RRGs increasing, and an increase in loss ratios across all carrier types, may be considered indicative of a marketplace that may not have the financial capacity to withstand an increase in the basic insurance limit.

The Department also solicited comments about this decision from all interested parties with a notice published in the Pennsylvania Bulletin on February 11, 2017. Health care providers raised concerns about the potential financial impact on them from an increase in basic insurance limits. If the basic insurance limits are increased, there will be a period of time during which health care providers will be required to pay both an increased premium to support the higher basic limits, an amount to cover the immediate MCARE assessment and an additional amount related to the accrued, but as of yet, unfiled claims.

In conclusion, it cannot be determined that additional basic insurance capacity is currently available for calendar year 2018. Accordingly, there will be no increase to the current basic primary limits for calendar years 2018 and 2019.