



DATE: August 18, 2015

TO: All Interested Parties

FROM: Teresa D. Miller
Insurance Commissioner

TDM

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 2016 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 2015 remaining in effect until such capacity is available in the future. The Department has previously undertaken reviews of the basic coverage market capacity five times. To date, none of the prior reviews resulted in a change in the Fund coverage levels.

Since the passage of Act 13 in 2002, there continue to be positive changes in the marketplace. However, there are a number of challenging factors present in our marketplace which may have an effect on capacity levels. These factors include the continually changing health care landscape and the large market share of risk retention groups ("RRGs"), which has increased since 2004. Because of their structure, RRGs have a more limited ability to raise additional capital to support increased limits and therefore could be negatively impacted. Another factor is the medical malpractice market itself. Insurance carriers that previously wrote only in Pennsylvania are becoming part of larger regional or national insurance groups whose commitment to the Pennsylvania market is unproven and thus, may negatively impact capacity.

It's also worth noting the potential financial impact on health care providers. 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 2016. Accordingly, there will be no increase to the current basic primary limits for calendar years 2016 and 2017.