

**NEW YORK STATE
INSURANCE DEPARTMENT**

**THIRD AMENDMENT TO REGULATION NO. 124
(11 NYCRR 152)**

**PHYSICIANS AND SURGEONS PROFESSIONAL INSURANCE MERIT RATING
PLAN**

I, Louis Pietroluongo, Acting Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201, 301, and 2343(d) and (e) of the Insurance Law and Section 42 of Part A of Chapter 1 of the Laws of 2002, as amended by Section 16 of Part J of Chapter 82 of the Laws of 2002 and Chapter 420 of the Laws of 2005, do hereby promulgate the Third Amendment to Part 152 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No.124), to take effect upon publication in the State Register, to read as follows:

(New Matter is Underlined; Matter in Brackets is Deleted)

Section 152.1 is amended by adding a new subdivision (e), to read as follows:

(e) Section 42 of Part A of Chapter 1 of the Laws of 2002, as amended by Section 16 of Part J of Chapter 82 of the Laws of 2002 and Chapter 420 of the Laws of 2005, requires all physicians, surgeons and dentists participating in the excess medical malpractice insurance program established by the Legislature in 1986 to participate in a proactive risk management program. Section 42 authorizes the superintendent to promulgate regulations that provide for the establishment and administration of proactive risk management programs.

Section 152.2 is amended by adding new subdivisions (c), (d) and (e) to read as follows:

(c) The term *physician*, when used in connection with the excess medical malpractice risk management program, shall mean a physician, surgeon or dentist participating in the excess medical malpractice insurance program.

(d) The term *excess medical malpractice program* means the program established by section 19 of Chapter 294 of the Laws of 1985, as extended by section 18 of Chapter 266 of the Laws of 1986, as amended.

(e) The term *insurer* includes the Plan established pursuant to Part 430 of this Title (Regulation 170).

Section 152.6 is amended to read as follows:

Section 152.6 Standards for qualified risk management program.

In order to qualify for the credit, a risk management program must meet the following minimum standards:

(a) The program must be administered by the insurer or, after the insurer has investigated the entity's qualifications, by an entity designated by the insurer to administer the program on its behalf.

(b) The program must contain at least two components:

(1) a basic risk management course; and

(2) a follow-up course to be taken once every two years after first receiving the risk management premium credit.

(c) The basic risk management course must:

(1) consist of either:

(i) a lecture (or other classroom setting) [component] format, of at least five hours in length exclusive of any breaks, covering topics related to risk management, including but not limited to recordkeeping, informed consent, legislation, legal environment, communication with patients, and office procedures; or

(ii) an internet-based course format, requiring interaction by the insured, that is equivalent to the time and content of the lecture format described in subparagraph (i) of this paragraph; and

(2) require the insured, subsequent to the lecture [component of the] or internet-based course, to complete a project (such as the critical review of case studies), that is designed to demonstrate and reinforce the concepts taught in the program, which must be returned to the insurer (or the entity conducting the risk management program) within 60 days after completion of the basic course lecture or internet-based course.

(d) Satisfactory completion of both the lecture [and project components of the basic risk management course] or the internet-based course and the project is required in order to grant a premium credit.

(e) In order to remain eligible for the risk management premium credit, the insured must complete [a] the follow-up course component, which must:

(1) (i) consist of a lecture (or other classroom setting) format of at least three hours in length exclusive of breaks; or

(ii) consist of an internet-based course format, requiring interaction by the insured, which is equivalent to the time and content of the lecture format described in subparagraph (i) of this paragraph;

(2) be designed to reinforce the concepts covered in the basic risk management course and to bring to the insured's attention any relevant developments since completion of the basic course;

(3) unless provided in the basic risk management course, contain material specific to the insured's medical specialty; and

(4) require the insured, subsequent to the lecture [component of the] format or the internet-based course, to complete a project (such as the critical review of case studies), that is designed to demonstrate and reinforce the concepts taught in the program, which must be returned to the insurer (or the entity conducting the risk management program) within 60 days after completion of each follow-up course.

(f) [The] If the program is presented in a lecture format, it must contain a methodology for verifying that the [physician] insured is present for the entire lecture period for both the basic and follow-up courses, and that the required project is completed by the insured [physician] in a satisfactory manner. If the program is presented in an internet-based course format, it must contain a methodology for verifying that the insured has logged on, taken and completed both the basic and follow-up courses, and completed the required project in a satisfactory manner. In addition, the insurer or the entity conducting the internet-based course must require the insured to affirm that he or she was the person who actually took the course and that he or she is aware that any premium credit granted by the insurer is based on his or her affirmation.

(g) [The program] If the program is presented in a lecture format, it must be taught by persons with appropriate expertise in the subject areas being covered. If the program is presented in an internet-based format, the program must be developed by persons or entities with appropriate technological expertise, and the course content must be developed by persons or entities with appropriate expertise in the subject areas covered.

(h) The program must contain a provision whereby insureds who transfer their coverage from another insurer with an approved risk management program will continue to receive the credit, if and only if such insureds have completed all requirements for the credit.

Subdivisions (d) and (e) of Section 152.7 are amended to read as follows:

(d) The risk management program must specify [the]:

- (1) [size] the amount of the credit;
- (2) the length of the basic and follow-up courses;
- (3) the specific basic and follow-up courses;
- (4) the qualifications required for developers of the internet-based program and instructors in each subject area;
- (5) the methodology for monitoring attendance during the lecture course format and for assuring that the eligible insured is the person who has taken and completed the internet-based course;
- (6) a description of the required project;
- (7) the methodology for verifying satisfactory completion of all components of the program prior to the granting, or continuation, of any premium credit;
- (8) the identity of the entity, if any, designated by the insurer to administer the risk management program on its behalf, the qualifications of that entity, and the steps the insurer will take to monitor the program;
- (9) the methodology for informing insureds of the availability of the risk management credit and the dates [and], locations, and, if applicable, the internet address, of each risk management [course] program offered by the insurer; [and]
- (10) the amount of tuition and other fees, if any, to be charged insureds participating in the program; and
- (11) for internet-based program format, a description of the type of interaction required of the insured, and the basis for the insurer's determination that the component is equivalent to the time and content of the lecture component.

(e) Insurers shall:

- (1) review at least annually and update as necessary, their risk management programs[at least annually];
- (2) submit all changes to the superintendent for prior approval; and
- (3) notify all insureds of the dates [and], locations, and if applicable, the internet address, of each risk management course offered by the insurer.

Section 152.8 is renumbered to be section 152.12 and new sections 152.8, 152.9, 152.10 and 152.11 are added to read as follows:

Section 152.8 Standards for risk management programs conducted for qualification in the excess medical malpractice insurance program.

In order to be eligible for participation in the medical malpractice excess insurance program (or remain eligible if currently participating in that program), a physician must successfully complete an excess medical malpractice risk management program that meets the following requirements:

(a) The program must consist of at least two components:

(1) an excess medical malpractice risk management basic course; and

(2) an excess medical malpractice risk management follow-up course to be taken once every two years thereafter.

(b) The excess medical malpractice risk management basic course must:

(1) meet the requirements for Category 1 continuing medical education credit;

(2) be in either:

(i) a lecture (or other classroom setting) format, of at least five hours in length exclusive of any breaks, covering topics related to risk management, including but not limited to recordkeeping, informed consent, legislation, legal environment, communication with patients, office procedures, and critical review of case studies, at least two hours of which shall consist of subject matter that is dedicated to topics related to the higher potential exposure of the excess insurance risk; or

(ii) an internet-based format, requiring interaction by the insured physician, that is equivalent to the time and content of the lecture format described in subparagraph (i) of this paragraph.

(3) require the insured physician, subsequent to the lecture or internet-based course set forth in paragraph (2), to complete a project (such as the critical review of case studies), which is designed to demonstrate and reinforce the concepts taught in the course and which must be returned to the insurer (or the entity conducting the risk management program) within 60 days after completion of the basic course lecture or internet-based course.

(c) Satisfactory completion of both the lecture or the internet-based course, and the project is required in order to participate in the excess medical malpractice insurance program.

(d) In order to remain eligible for participation in the excess medical malpractice insurance program in succeeding policy years, the physician must complete an excess medical malpractice follow-up course once every two years, which must:

(1) (i) consist of a lecture (or other classroom setting) format of at least three hours in length exclusive of breaks. At least one hour of the course shall consist of subject matter that is dedicated to topics related to the higher potential exposure of the excess insurance product; or

(ii) consist of an internet-based course format, requiring interaction by the insured physician, that is equivalent to the time and content of the lecture format described in subparagraph (i) of this paragraph;

(2) be designed to reinforce the concepts covered in the excess medical malpractice basic risk management course and to bring to the insured's attention any relevant developments since completion of the basic course;

(3) unless provided in the excess medical malpractice risk management basic course, contain material specific to the insured's medical specialty; and

(4) require the insured physician, subsequent to the lecture or the internet-based component of the course, to complete a project (such as the critical review of case studies), which is designed to demonstrate and reinforce the concepts taught in the course and which must be returned to the insurer (or the entity conducting the risk management program) within 60 days after completion of each follow-up course.

(e) If the program is presented in the lecture format, it must contain a methodology for verifying that the insured physician is present for the entire lecture period for both the basic and follow-up courses, and that the required project is completed by the insured physician in a satisfactory manner. If the program is presented in an internet-based format, it must contain a methodology for verifying that the insured physician has logged on, taken and completed the required basic or follow-up course, and completed the required project in a satisfactory manner. In addition, the insurer or the entity conducting the internet-based program must require the insured physician to affirm that he or she was the person who actually took the program and that he or she is aware that any benefit granted pursuant to completion of the program is based on his or her affirmation.

(f) If the program is presented in the lecture format, it must be taught by persons with appropriate expertise in the subject areas being covered. If the program is presented in an internet-based format, the program must be developed by persons or entities with appropriate technological expertise, and the program content must be developed by persons or entities with appropriate expertise in the subject areas covered.

(g) The program must contain a provision whereby an insured who transfers excess medical malpractice insurance coverage from another insurer will continue to participate in the excess medical malpractice insurance program, but only if the insured has completed all requirements for such participation.

(h) (1) The program must be administered by the insurer or, after the insurer has investigated the entity's qualification, by an entity designated by the insurer to administer the program on its behalf.

(2) (i) The superintendent, pursuant to section 42 of Part A of Chapter 1 of the Laws of 2002, as amended by section 16 of Part J of Chapter 82 of the Laws of 2002 and Chapter 420 of the Laws of 2005, has designated the Medical Society of the State of New York ("The Medical Society") to review those portions of the basic and follow-up courses dedicated to the excess risk of each insurer's program in order to assure that the subject matter addresses the excess exposure and is consistent among all insurers offering the excess medical malpractice insurance program.

(ii) Subject to the approval by the superintendent, the Medical Society shall develop guidelines for use in evaluating the courses submitted to it for review. A copy of the guidelines shall be provided to an insurer upon request.

(iii) The Medical Society shall complete its review and provide a determination of any course submitted to it within 30 days of receiving all needed information. Failure to render a determination within such period shall be deemed a denial.

(iv) An insurer may, within 30 days, appeal an adverse determination by the Medical Society to the superintendent.

Section 152.9 Excess medical malpractice risk insurance coverage eligibility requirements.

(a) In order to be eligible for participation in the excess medical malpractice insurance program effective July 1st of any policy year, a physician must complete all of the requirements for the excess medical malpractice basic or follow-up course, as applicable, prior to that date. For example, in order for a physician to be eligible for the excess medical malpractice insurance program effective July 1, 2005 through June 30, 2007, the physician must have completed the required basic or follow-up course requirements, as appropriate, by July 1, 2005.

(b) A physician that has not satisfactorily completed all the excess medical malpractice risk management requirements as provided in subdivision (a) of this section may not be eligible for the excess medical malpractice insurance program until, and effective as of, the date the requirements are completed. The physician must also complete any required excess medical malpractice follow-up course during the following policy year in order to be eligible for the excess medical malpractice insurance program effective July 1st of the next succeeding two policy years. For example, a physician who does not complete the basic or follow-up course, which is required for eligibility beginning July 1, 2005, until August 1, 2005, becomes eligible for excess medical malpractice insurance on August 1, 2005. The physician continues to be eligible for the policy year beginning July 1, 2006. In order to continue to be eligible for excess medical malpractice insurance effective July 1, 2007, the physician must complete the excess medical malpractice risk management follow-up course requirements by July 1, 2007.

Section 152.10 Coordination of excess medical malpractice risk management program with qualified risk management program.

In recognition of the fact that some physicians are also participating in a qualified risk management program filed by their insurer pursuant to section 152.6 of this Part, and in order to facilitate participation in the excess medical malpractice risk management program, the following rules shall apply:

(a) The excess medical malpractice risk management basic course must be successfully completed even if the participating physician has previously completed the basic risk management course described in section 152.6(c) of this Part.

(b) For a physician who has not previously participated in a qualified risk management program, satisfactory completion of the five hour excess medical malpractice risk management program basic course will also qualify for completion of the qualified risk management program basic course if the physician's insurer has an approved qualified risk management program pursuant to section 152.6 of this Part.

(c) A physician also participating in a qualified risk management program who would otherwise be required to complete both the three hour qualified risk management program follow-up course pursuant to section 152.6(e) of this Part and the five hour excess medical malpractice risk management program basic course in the same year may satisfy both requirements by successfully completing the five hour excess medical malpractice risk management basic course.

(d) A physician also participating in a qualified risk management program who would otherwise be required to complete both the three hour qualified risk management follow-up course pursuant to section 152.6(e) of this Part and the three hour excess medical malpractice risk management program follow-up course in the same year may satisfy both requirements by successfully completing the three hour excess medical malpractice risk management follow-up course.

Section 152.11 Implementation of excess medical malpractice risk management programs.

(a) An insurer that writes medical malpractice insurance for physicians must submit a proposed excess medical malpractice risk management program to the superintendent and obtain approval prior to the participation of any insured in the program.

(b) The risk management program must specify:

(1) the length of the basic and follow-up courses;

(2) the specific basic and follow-up courses;

(3) the qualifications required for developers of the internet-based program and instructors in each subject area;

(4) the methodology for monitoring attendance during the lecture course format and for assuring that the eligible insured physician is the person who has taken and completed the internet-based course;

(5) a description of the required project;

(6) the methodology for verifying satisfactory completion of all components of the program prior to the certifying of an insured physician to be eligible to participate in the excess medical malpractice insurance program;

(7) the identity of the entity, if any, designated by the insurer to administer the risk management program on its behalf, the qualifications of that entity, and the steps the insurer will take to monitor the program;

(8) the methodology for informing insureds of the availability of the risk management course and the dates, locations, and if applicable, the internet address of each risk management course offered by the insurer;

(9) for internet-based components, a description of the type of interaction required of the insured physician, and the basis for the insurer's determination that the component is equivalent to the time and content of the lecture component; and

(10) evidence from an entity accredited to grant continuing medical education credit that the basic course qualifies for Category 1 continuing medical education credit.

(c) An insurer shall:

(1) review at least annually, and update as necessary, its excess medical malpractice risk management program;

(2) submit all changes to the superintendent for prior approval; and

(3) notify all insureds of the dates, locations, and if applicable, the internet address of each risk management program offered by the insurer.

(d) Any insured physician participating in a risk management program for the purpose of eligibility for the excess medical malpractice insurance program in this state shall not be charged a fee or other assessment in connection with this program.

The old section 152.8 is renumbered to be section 152.12 and is amended to read as follows:

Section [152.8] 152.12 Records maintenance, audits and reporting requirements.

(a) Every insurer that offers a risk management premium credit shall maintain loss and expense statistics separately for those [physicians] insureds receiving and not receiving the credit, and such statistics shall be made available to the superintendent upon request.

(b) At least once every two years, an insurer shall conduct a risk management audit of all insured physicians participating in its excess medical malpractice risk management programs pursuant to this Part. Such audit may be in the form of a self-review survey completed by each insured physician.

(c) An insurer that utilizes a self-review survey in lieu of a physical audit shall develop self-review procedures specific to the type of practice, varying by specialty type and size of the practice engaged in by the insured, and any other criteria it determines appropriate to evaluating the effectiveness of the excess medical malpractice risk management program.

(d) The self-review procedures shall be designed to provide information to the insurer to determine that participants are properly following the procedures and principles presented in the course, to assist the insurer in developing revisions and improvements to its excess medical malpractice risk management programs and to provide for the establishment of best practices in risk management methods.

(e) [Every] An insurer offering a risk management premium credit or an insurer offering a risk management program for the purpose of eligibility in the excess medical malpractice insurance program shall annually, no later than March 1st, submit to the superintendent a report indicating, by territory and medical specialty:

(1) total number of insureds; [and]

(2) number of insureds receiving the premium credit; and

(3) number of insureds participating in risk management programs qualifying for excess medical malpractice insurance coverage.

I, Louis Pietroluongo, Acting Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is the Third Amendment to 11 NYCRR 152 (Regulation No. 124), entitled "Physicians and Surgeons Professional Insurance Merit Rating Plan", promulgated by me on January 8, 2007 pursuant to the authority granted by Sections 201, 301, 2343(d) and (e) of the Insurance Law and Section 42 of Part A of Chapter 1 of the Laws of 2002, as amended by Section 16 of Part J of Chapter 82 of the Laws of 2002 and Chapter 420 of the Laws of 2005, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed amendment was published in the State Register on November 15, 2006. No other publication or prior notice is required by statute.

Louis Pietroluongo
Acting Superintendent of Insurance

January 8, 2007