

## CHAPTER Ins 1700 MEDICAL MALPRACTICE LIABILITY INSURANCE

Statutory Authority: RSA 400-A:15; RSA 404-C:1

## PART Ins 1701 NEW HAMPSHIRE MEDICAL MALPRACTICE JOINT UNDERWRITING ASSOCIATION PLAN

Ins 1701.01 Purpose. The purpose of this chapter is to provide for the establishment and maintenance of the New Hampshire medical malpractice joint underwriting association by providing the plan of operation of the association. The purpose of the association is to provide a mechanism to ensure that adequate medical malpractice insurance is readily available to all risks in this state that are equitably entitled to such coverage. It is the intent of this chapter that, by ensuring access to adequate medical malpractice insurance for all eligible health care providers, the association will promote the public interest in ensuring that consumers of health care services have adequate access to needed care.

## PART Ins 1702 PLAN PARTICIPATION

Ins 1702.01 Persons Required to Participate. Every insurer authorized to write liability insurance on a direct basis within this state, including every insurer covering such perils in multiple peril package policies, shall be a member of the association and shall remain a member as a condition of its authority to write such insurance in this state.

Ins 1702.02 Termination of Participation. A member may terminate membership in the association as of the close of the fiscal year of the association in which its authority to write the insurance as described in Ins 1702.02 is terminated. With respect to all policies in force on the effective date of a member's termination, the liability of the terminating member shall cease on the succeeding anniversary date of each such policy. Termination of membership shall not discharge or otherwise affect liabilities incurred prior to the anniversary date of such policies, and the member shall be charged or credited in due course with its proper share of all expenses, losses and profits allocable thereto.

Ins 1702.03 Basis of Participation.

(a) All insurers that are members of the association shall participate in its premiums, expenses, servicing allowance and losses in the proportion that the net direct premiums of such members written in this state during the preceding calendar years bear to the aggregate net direct premiums written in this state during the preceding calendar year by all members of the association, except that such computations shall exclude that portion of the premiums attributable to the operation of the association. Each insurer's participation in the association shall be determined on the basis of such net direct premium as reported in the most recent annual statements filed by the insurer with the commissioner.

(b) All producers licensed for liability insurance shall be authorized to procure medical malpractice insurance for eligible risks from the association. As a condition of the authority to continue acting as a producer, no such producer shall refuse to procure such insurance for an eligible risk. No insurer shall penalize any of its producers, either directly or indirectly, for procuring such insurance for eligible risks.

(c) The association shall issue or cause to be issued a policy of medical malpractice insurance to any eligible risk, utilizing the rates, rating plans, policy forms, rules and classification systems approved by the commissioner in accordance with RSA 412:2.

Ins 1702.04 Service. Subject to the provisions of this chapter the commissioner, pursuant to Ins 1703.05, shall appoint one or more members to be servicing carriers or other non-member service organizations. Each eligible risk insured by the association shall receive the same level of service as is generally available in the voluntary market, including but not limited to, loss prevention assistance and reasonable premium payment plans.

PART Ins 1703 PLAN OF OPERATION NEW HAMPSHIRE MEDICAL MALPRACTICE JOINT  
UNDERWRITING ASSOCIATION

Ins 1703.01 Definitions.

(a) "Anticipated liabilities" means the sum of the annual loss and loss adjustment expense incurred as shown in the most recent audited financial statement plus the actual operating expenses for the last 3 month period of the most recent audited financial statement.

(b) "Association" means the New Hampshire medical malpractice joint underwriting association.

(c) "Board" means the board of directors of the association.

(d) "Commissioner" means the insurance commissioner of the state of New Hampshire.

(e) "Eligible risk" means any health care provider operating legally in the state of New Hampshire excluding such person if timely payment of premium is not tendered or if there is an unsatisfied judgment of record against such person for recovery of amounts due for medical malpractice insurance premiums and such person has not been discharged from paying such judgment, or if such person does not furnish the information necessary to effect insurance coverage.

(f) "General assets" means "general assets" as defined in RSA 402-C:3.

(g) "Health care provider" means:

(1) In the case of a natural person, a person licensed or approved by the state to provide health care or professional services, including but not limited to, as a:

- a. Physician;
- b. Surgeon;
- c. Osteopath;
- d. Podiatrist;
- e. Chiropractor;
- f. Dentist;
- g. Dental hygienist;
- h. Registered pharmacist;
- i. Registered professional nurse;
- j. Licensed practical nurse;
- k. Advanced registered optometrist;
- l. Physical therapist;
- m. Physiotherapist;
- n. Physician's assistant;

- o. Paramedic; or
- p. Psychologist;

(2) In the case of an institution:

- a. Hospital;
- b. Nursing home;
- c. Health maintenance organization;
- d. Ambulance or other corporation;
- e. Facility or entity licensed by the state to provide health care services; or
- f. An officer, employee or agent of any such person or institution acting in the course and scope of his employment; and

(3) Where the context so permits, both persons and institutions as listed in (1) and (2) above.

(h) "Medical malpractice insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as a result of negligence in professional services rendered or which should have been rendered by any health care provider operating legally in the state and includes such other forms of liability insurance, other than automobile, reasonably necessary for and incidental to the provision of medical care by such health care provider. It does not include excess liability insurance which would serve to increase the limits of coverage over the maximum provided for in this plan of operation.

(i) "Member" means an insurer that is a member of the association.

(j) "Net direct premiums" means gross direct premiums written in this state on liability insurance, including the liability component of multiple peril package policies, 25 percent, and the liability component of homeowners policies, 10 percent, less return premiums and dividends paid or credited to policyholders thereon.

(k) "Person" means any natural person, firm, co-partnership, association, corporation, government or agency thereof.

(l) "Policyholder" means those health care providers who are or have been previously insured through the association.

(m) "Primary medical liability coverage" means:

- (1) Coverage with limits up to and including \$ 1,000,000 for each claimant; and
- (2) Up to \$3,000,000 for all claims in any policy year.

(n) "Producer" means a person required to be licensed pursuant to RSA 402-J to sell, solicit, or negotiate insurance.

(o) "Statutory accounting practices and procedures" means accounting practice and procedures promulgated in the NAIC Accounting Practices and Procedures Manual pursuant to RSA 400-A:36 and Ins 4500.

Ins 1703.02 Obligation of Members.

(a) Every member shall be bound by Ins 1703.

(b) The obligation of any member whose membership in the association terminates shall continue with respect to its obligations incurred during its membership.

(c) A member whose membership in the association terminates shall continue to pay assessments until its proportionate share has been determined and paid. However, if the liability business of a company has been purchased by, transferred to, or reinsured by another company, the latter shall receive the assessments of the former until the proportionate share of the former has been determined and paid.

(d) In the event of a merger or consolidation of companies, the continuing company shall pay all assessments of the company merged or consolidated until the proportionate share of such merged or consolidated company prior to such merger or consolidation has been determined and paid. However, the continuing company may be relieved from any obligations if another company has agreed to assume the obligations of the merged or consolidated member.

(e) Any unsatisfied obligation to the association of any insolvent member shall be assumed by and apportioned among the remaining members of the association in the manner provided in Ins 1703.07. The association shall have all rights allowed by law on behalf of the remaining members against the estate or funds of such insolvent member for sums due the association pursuant to RSA 402-C.

(f) No claim against the association shall create any severable liability of the member companies pursuant to RSA 404-C:2 III.

(g) No assessment shall be levied against a member company which has written no net direct premiums during the period for which the proportionate shares are based.

Ins 1703.03 Meetings of the Members.

(a) A regular meeting of the members shall be held annually on a date, at a place within the state, and at a time designated by the board.

(b) Special meetings may be called at any time by the chairman of the board.

(c) The chairman of the board shall promptly call a special meeting upon the written request of any of the following:

(1) The commissioner;

(2) At least 2 voting board members; or

(3) Any 15 or more members whose net direct premiums equal 20 percent or more of the net direct premiums of all members in the most recent calendar year.

(d) The chairman of the board shall give written notice of all meetings of the association to each member, to each member of the board, and to the commissioner. Such notice shall be given either by letter, mailed, except where otherwise provided herein, not less than 10 days prior to the meeting, or by telegram sent not less than 5 days prior to the meeting. The chairman of the board shall also give notice to the public as required by the Right-to-Know Law, RSA 91-A:2, II.

(e) A quorum at any meeting of the association shall consist of 51 percent of the members, which members shall be present at the meeting.

(f) The matters to be considered at any special meeting of the association shall be restricted to those matters which are set forth in the notice of such meeting. At annual meetings members may consider and act upon all matters properly brought before them, whether or not contained in the notice of an annual meeting.

(g) Subject to (h) below each member of the association shall be entitled to one vote at all meetings of the association.

(h) Action shall be taken at any meeting only upon a majority vote of the members voting, provided that such majority represents not less than 51 percent of the total net direct premiums written during the latest calendar year by all members voting on such action.

(i) Members may record their vote by mail on written propositions and such votes shall have the same standing as if cast by such member in person for such proposition.

(j) Minutes of all meetings of the association and of the board shall be sent to all members of the board, and to the commissioner, and shall be made available to any member of the association, and the public, upon request pursuant to the provisions of RSA 91-A:4 I.

Ins 1703.04 Board of Directors.

(a) The board of directors shall be composed of 7 voting representatives appointed by the commissioner from persons nominated by the board.

(b) The board of directors shall contain 7 voting representatives nominated as follows:

(1) An insurer which is a member of, and nominated by, the New Hampshire Association of Domestic Insurance Companies;

(2) A health care provider which is a member of, and nominated by, the New Hampshire Medical Society;

(3) A health care provider which is a member of, and nominated by, the New Hampshire Hospital Association;

(4) A member insurer of the association to be nominated by the commissioner;

(5) A health care provider who is not a member of the New Hampshire Medical Association nor is a member of the New Hampshire Hospital Association who is nominated by the commissioner; and

(6) Representatives of the public who are not members of any of the preceding groups found in (b)(1), (2), (3), (4), or (5) nor have any affiliation with the preceding groups, as nominated by the commissioner shall consist of 2.

(c) The names of the nominees as selected in accordance with Ins 1703.04(b)(1), (2) and (3) shall be placed in nomination before the commissioner 2 months prior to the completion of the term of the current voting representatives.

(d) Each board representative shall serve for a term of 3 years and can be nominated to serve additional terms.

(e) No representative shall fill more than one position on the board.

(f) All board representatives shall serve until their successors are designated. Any vacancy on the board, by resignation of a representative, or otherwise, shall be filled in the manner provided herein for initial designation, but the designee shall serve only for the unexpired portion of the term for which the designee is designated, unless such representative is subsequently appropriately designated to serve an additional term.

(g) The board shall hold an annual meeting in conjunction with the annual meeting of the members, at which time it shall elect a chairman and report a summary of the activities during the previous fiscal year.

(h) The board shall hold additional meetings whenever requested by the chairman, or by the commissioner, or upon petition of 3 board representatives. Unless a majority of the board requests a waiver of such notice requirement, a 10-day notice shall be provided for any meeting of the board.

(i) Written notice of meeting and agenda for the meetings shall be sent to all the members of the board, to members requesting them, and to the commissioner at least 2 weeks in advance of any meeting. Notice of the meeting shall also be given to the public as required by RSA 91-A:2. Only items specifically listed on the agenda shall be considered unless 3 of the representatives on the board who are present vote for the admission of each additional item. The board shall elect a secretary from amongst the membership whose duty it shall be to prepare and maintain a set of minutes of the proceedings of each meeting of the board.

(j) Each voting member of the board shall have one vote, and actions of the board shall be binding when voted by a majority of those eligible to vote who are present and voting, and no vote shall be taken unless 4 voting representatives of the board are present.

(k) The fiscal year of the association shall end December 31 of each year.

(l) The commissioner shall grant the board the authority to exercise all reasonable or necessary powers relating to the operation of the association.

(m) The board shall annually file with the commissioner a financial statement prepared in accordance with statutory accounting practices and procedures which shall be audited and certified to by an independent certified public accountant.

(n) The percentages enumerated in Ins 1703.01 (j) used in the quantification of net direct written premium shall be updated by the board after an analysis, to be performed no more often than once every 5 years, and reviewed by the commissioner, who shall approve a change in allocation if there has been a material change to this allocation and if it more accurately reflects current insurance business practices.

(o) The board shall retain such staff and appoint such committees as are reasonable and appropriate to carry out the operations of the association.

(p) Premiums paid for coverage shall be invested by the association in the following manner:

(1) The liquid reserves portion of the portfolio shall consist of commercial paper, bankers' acceptances, certificates of deposit, and U.S. Treasury and agency obligations;

(2) All fixed-income securities shall be rated A or better by Standard & Poors and Moodys;

(3) The association's investments shall comply with RSA 402:28;

(4) No more than 25% of the portfolio shall be invested in any one industry.

(5) Securities guaranteed by the United States Treasury shall be exempted from these restrictions.

Ins 1703.05 Service Carriers.

(a) The board shall recommend, annually or whenever necessary, one or more members of the association, or a non-member that meets the requirements outlined in Ins 1703.05 (b) (3), to act as servicing carriers to be appointed by the commissioner.

(b) Servicing carriers shall meet the following requirements:

(1) The servicing carrier shall have the capability to properly process and service all eligible risks at a level equal to that rendered in the voluntary market;

(2) The servicing carrier shall agree to service all eligible risks at a level equal to that rendered in the voluntary market;

(3) The servicing carrier shall agree to perform those duties necessary or incidental to the fulfillment of its obligations hereunder, including, but not limited to:

a. The binding of coverage;

b. The issuance of policies;

c. The collection of premium;

d. The processing of subsequent policy transactions;

e. The performance of necessary and reasonable loss prevention services;

f. The servicing of claims on a timely basis;

g. The carrying out of all necessary accounting procedures;

h. The collection of necessary or required data;

i. The generation of necessary or required statistical and accounting information in the report format required; and

j. The collection of assessment of members as provided in Ins 1703.07, paragraphs (a), (b) and (c) under the general supervision of the commissioner.

(c) Nothing shall preclude the designation of servicing carriers to service specified kinds of health care providers who are eligible risks, provided that the board shall appoint sufficient servicing carriers to service all kinds of health care providers who are eligible risks. If no member is willing or able to act as a servicing carrier, or if, for any other reason, the commissioner does not appoint a servicing carrier, then the board itself shall act as a servicing carrier.

(d) The servicing carrier shall bind coverage and issue policies on behalf of the association and do those things necessary and incidental thereto, including the collection and transmission of premium to the association and payment of commission to the producer.

(e) The board shall establish a bank account upon which the servicing carrier shall be empowered to draw to pay claims and related expenses. The board shall perform those acts reasonable, necessary or incidental to the establishment of such an account, including arranging appropriate fidelity bond coverage.

Ins 1703.06 Servicing Carrier Allowance.

(a) Servicing carriers shall pay losses, receive reimbursement for expenses, and pay commissions on the following basis:

(1) The servicing carrier shall pay losses from the association's account as provided in Ins 1703.05(e);

(2) The servicing carrier shall be reimbursed as provided in Ins 1703.05(e) for expenses of association business in accordance with a fee negotiated between the servicing carriers and the board of directors prior to appointment by the commissioner pursuant to Ins 1703.05(a);

(3) The servicing carriers shall pay commissions of 7 ½% from the association's account as provided in Ins 1703.05(e) to the producer on new and renewal business written through the association; and

(4) The servicing carrier shall not pay any commission on amounts received pursuant to Ins 1703.08 (b).

(b) The board shall authorize a servicing carrier such additional reimbursement as deemed reasonable by the board for expenses incurred in qualifying for, or ceasing to be, a servicing carrier and report such authorization to the commissioner.

(c) The board shall authorize the reimbursement of a servicing carrier for normal insurance business losses incurred in connection with association business. Such normal business losses shall include any losses or reasonable expenses paid or incurred which are not otherwise reimbursed under (a) or (b) above, or which are in excess of the allowances provided thereunder, or which would reduce the service fee allowed and report such authorization to the commissioner. However, such losses shall not include any loss or expense incurred as a result of fraud or dishonesty on the part of any personnel of a servicing carrier, including but not limited to independent adjusters, or on the part of others with whom the servicing carrier has entered into contracts for the performance of all or part of the duties required of servicing carriers.

(d) Losses or expenses reimbursable to servicing carriers for which sufficient funds are not otherwise available shall be obtained by the board through an assessment against members of the association.

(e) In the event that the board shall be required to act as a servicing carrier pursuant to Ins 1703.05 (c), the board shall be considered to be a servicing carrier for the purposes of Ins 1703.06.

(f) The board shall maintain a complete accounting of all loss and expense reimbursements allowed servicing carriers under the provisions of Ins 1703.06.

Ins 1703.07 Assessment of Members for Deficits Incurred as a Result of Policies Issued on or After January 1, 1986.

(a) To the extent possible, losses and expenses of the association shall be paid from premium written on association business, including any amounts earned from the investment of such premium. If these are insufficient, assessments to pay for any deficiency shall be levied as frequently as the board deems necessary and report such assessments to the commissioner.

(b) If the amount of assessment under this paragraph would, in the opinion of the board, place any member of the association in financial jeopardy, the board shall reduce the amount of assessment levied against such member, and the amount by which the assessment is reduced may be allocated among the remaining members and report such action to the commissioner. For the purposes of this paragraph, "financial jeopardy" means that the member would be placed at substantial risk of failing to meet financial requirements for continued licensure in the state, if the assessment were to be imposed on it.



(c) If premiums written on association business exceed the amount necessary to pay losses and expenses, the board shall apply such excess to repay members for assessments previously levied, in proportion to the amount paid by each member.

(d) If premiums written on association business exceed the amount necessary to pay losses and expenses and to reimburse members for all assessments pursuant to Ins 1703.07(c), then with review and approval by the commissioner as being consistent with the purposes of this chapter, the board shall authorize the application of such excess in one or both of the following ways:

(1) Against and to reduce future assessments of the association; or

(2) Distribute the excess to such health care providers covered by the association as is just and equitable.

(e) The "amount necessary to pay losses and expenses" shall be determined using accepted actuarial methodologies and standards of practice. The process and time frame by which these amounts are determined shall be submitted by the board to the commissioner for review and approval as being consistent with accepted actuarial methodologies and standards of practice and RSA 412:15, 412:16 and 412:26, as well as Ins 1703.11 and Ins 902.

(f) If the application of paragraph (c) is insufficient to repay any prior assessments paid by members of the association, the board shall develop a reimbursement plan that includes:

(1) An assessment and/or surcharge against all health care providers by the association, not to exceed 100 percent of each premium for the policy year in which the assessment or surcharge is made, as determined pursuant to Ins 1703.11 of the plan of operation provided that the payment of the assessment or surcharge may be applied over a period not to exceed 3 years in the event that it is greater than \$10,000;

(2) A surcharge on future policies of liability insurance not to exceed 3 percent per annum of such premium and in the case of multiple peril policies, such surcharge shall apply solely to that portion of the premium used as the basis for participation in the association.

(g) The board shall advise the commissioner before entering into such reinsurance agreements as would reasonably serve to limit the possible amount of assessments against members. The reasonable cost of such reinsurance shall be considered to be a valid expense of the association for the purpose of Ins 1703.07.

Ins 1703.08 Assessment of Members for Deficits Incurred as a Result of Policies Issued Prior to January 1, 1986.

(a) The trust, established pursuant to Ins 1703.09 shall maintain a stabilization reserve fund. The fund shall be used for payment of any deficit of the association, which is incurred as a result of policies issued prior to January 1, 1986. A deficit shall exist whenever the general assets of the association, derived from policies issued prior to January 1, 1986, is exhausted by virtue of payment of or allocation for the association's necessary administrative expenses, losses, loss adjustment expenses and reserves, including the incurred but not reported reserve for loss and loss adjustment expenses.

(b) Each policyholder purchasing or renewing a policy of medical malpractice liability insurance on or after January 1, 1986 shall pay to the insurer issuing the policy an annual stabilization reserve fund charge in an amount equal to 15% of the annual gross premium charged for primary medical liability coverage. The stabilization reserve fund charge shall not apply to medical malpractice coverage purchased in excess of primary coverage. Such surcharge shall be separately stated in the policy, shall be collected by the insurer issuing the policy and shall be remitted pursuant to Ins 1703.10. Such charge shall not be subject to the premium tax provisions of RSA 400-A:31 and/or RSA 400-A:32. Failure to pay the stabilization reserve fund charge shall be grounds for cancellation of the policy.

(c) No insurer issuing policies of medical malpractice liability insurance which are subject to the stabilization reserve fund charge shall pay commissions on any charges collected.

(d) The charges imposed by this section shall remain in effect until the commissioner determines that a deficit no longer exists. The commissioner shall annually hold a public hearing pursuant to the provisions of RSA Chapter 400-A to determine whether a deficit continues to exist.

(e) If the stabilization reserve fund exceeds the amount necessary to pay all losses, loss adjustment expense and operating expenses incurred as a result of policies issued by the association prior to January 1, 1986, the trust, as established by Ins 1703.09, shall return the excess to those health care providers who have been charged in a manner which is fair and equitable, or shall be applied against and reduce future assessments of the association.

(f) Upon a determination by the board that the anticipated liabilities of the association derived from losses, loss adjustment expense and operating expenses incurred as a result of policies issued by the association prior to January 1, 1986 exceed the sum of the general assets of the association and the current balance of the stabilization reserve fund trust account, the commissioner shall impose a surcharge at a rate not to exceed 2% of the annual premium on policies issued or delivered in this state affording those lines of insurance which form the basis for members participation in the association. Pending collection of the surcharge, any monies necessary for the continued operation of the association may be obtained through assessments against the members of the Association in accordance with Ins 1703.07 (a). The commissioner shall authorize members of the association to recoup their assessments by reimbursement from funds collected pursuant to the surcharge imposed by this paragraph. The member companies shall report to the commissioner by March 1 of each year pursuant to RSA 400-A:36 III, by annual statement line of business the amount of surcharges made for the preceding calendar year;

(g) If the funds received from the association members as a result of the surcharges made in accordance with Ins 1703.08 (f) exceed the amount necessary to pay all losses, loss adjustment and operating expenses associated with policies issued by the association prior to January 1, 1986, the board shall apply such excess in one or more of the following ways:

(1) Repay those policyholders who were surcharged in accordance with Ins 1703.08 (f), in proportion to the amount paid by each policyholder; and/or

(3) Apply against and reduce future assessments of the association.

(h) The "amount necessary to pay losses, loss adjustment expenses and operating expenses incurred" shall be determined using accepted actuarial methodologies and standards of practice. The process and time frame by which these amounts are determined shall be submitted to the commissioner for review and approval as being consistent with actuarial methodologies and standards of practice and RSA 412:15, 412:16 and 412:26, as well as Ins 1703.11 and Ins 902.

(i) The board shall enter into such reinsurance arrangements it determines is appropriate to reduce the association's net liability. The cost of such reinsurance shall be considered to be a valid expense of the association for the purpose of Ins 1703.08.

Ins 1703.09 Stabilization Reserve Fund Trust.

(a) The stabilization reserve fund trust shall be managed by the board.

(b) The board shall submit a summary of activities of the trust during the previous fiscal year in conjunction with the annual meeting of the association.

(c) The fiscal year of the trust shall be determined by the board.

(d) The board shall exercise all reasonable or necessary powers relating to the operation of the trust, including the investment of the surcharges received as a result of the stabilization reserve fund charge subject to the provisions of this chapter.

(e) Pursuant to Ins 1703.08 (a), monies from the trust shall be used to pay to the association funds determined by the board in order to cover any deficit of the association, which is incurred as a result of policies issued prior to January 1, 1986.

(f) The board shall annually file with the commissioner a financial statement prepared in accordance with generally accepted accounting principles which shall be audited and certified to by an independent certified public accountant.

(g) The board shall retain such staff and appoint such committees as are reasonable and appropriate to carry out the operations of the trust.

(h) All income generated by the investment of the funds held in the trust shall be credited to the stabilization reserve fund trust.

(i) The trust shall be subject to examination by the commissioner in accordance with RSA 400-A:37.

(j) If it has been determined pursuant to Ins 1703.08 (d) that a deficit does not exist, and if either the stabilization reserve fund does not exceed the amount necessary to pay all losses, loss adjustment expense and operating expenses incurred as a result of policies issued by the association prior to January 1, 1986 or the excess has been applied as described in Ins 1703.08 (e), then, upon application by the board and a public hearing, the commissioner shall approve a transfer of existing funds in the stabilization reserve fund trust account to the general assets of the association and a dissolution of the trust.

Ins 1703.10 Collection and Remitting of the Stabilization Reserve Fund Charges.

(a) Every insurer or association that has issued policies of medical malpractice liability insurance, unless granted an extension pursuant to RSA 400-A:31 which shall be such insurer's payment date, shall pay on or before March 1 of each year to the New Hampshire medical malpractice stabilization reserve fund trust the charges levied pursuant to Ins 1703.08 (b). Every insurer shall also provide the name and address of each insured charged, and the amount of gross premium and charge collected. The payment shall be made by check payable to the New Hampshire medical malpractice stabilization reserve fund trust and forwarded to the insurance commissioner's office with the required report.

(b) On or before July 1, 1986, and on or before July 1 of each succeeding year, every insurer or association issuing policies of medical malpractice liability insurance shall pay to the New Hampshire malpractice stabilization reserve fund trust an amount equal to one-half of the charges collected in the previous calendar year. This payment shall be considered as partial payment of the charge liability for the calendar year in which the payment was received.

(c) The charges remitted to the commissioner shall be promptly forwarded to the New Hampshire medical malpractice stabilization reserve fund trust.

(d) Any insurer or association intentionally failing to file the report required by this section or intentionally failing to remit the proper amount due within the time for filing shall be subject to a fine of \$2500 pursuant to RSA 400-A:15 III.

(e) Any insurer who has inadvertently made payment to the medical malpractice stabilization reserve fund trust in excess of the amount legally chargeable against such insurer may apply to the commissioner for refund of such overpayment. If the commissioner is satisfied that, because of some mistake of fact, error in calculation, or erroneous interpretation of law of this state, an overpayment was

made by the insurer, the commissioner shall direct the medical malpractice stabilization reserve fund trust to make a cash refund to the insurer.

Ins 1703.11 Coverage, Rates and Forms.

(a) Coverage shall be provided under such policies and forms and subject to such rates, rating plans and classification systems as determined by the board to be at the same level as is provided in the voluntary market. Such coverage shall be on an occurrence or claims-made basis.

(b) The association shall offer coverage for medical malpractice claims reported after the inception of coverage of the eligible risk by the association which were incurred while the eligible risk was covered under a prior claims-made policy, but for which period the prior claims-made policy does not provide coverage or offer the option to purchase coverage. The association shall not be required to offer coverage for such periods that the prior liability carrier has offered the option to purchase the coverage. Such coverage by the association shall be at the same level and same limits otherwise provided under this part, including the plan of operation.

(c) Coverage for an eligible risk shall become effective at 12:01 A.M. on the day following the day the eligible risk applies for coverage, unless the eligible risk requests a later effective date, provided that timely payment of the appropriate premium is made. The date of application shall be the date the eligible risk signs the application or the date on which the producer notifies the association, whichever is sooner, provided that no producer shall delay the signing of the application or the notification to the association so as to avoid the timely binding of coverage. Coverage shall remain in effect for one year, unless the eligible risk cancels or unless premium is not paid when due.

(d) Coverage shall be provided at such limits and for such forms of medical malpractice insurance, as the eligible risk may select. Such insurance shall be subject to minimum limits of \$25,000 for each claimant and \$75,000 for all claimants in any one policy year, and subject to maximum limits of \$1,000,000 for each claimant and \$3,000,000 for all claimants in any one policy year. With respect to coverage which provides for a separate limit for the liability of the insured for damage to property, such limit shall be subject to a minimum of \$25,000 per occurrence and to a maximum of \$100,000 per occurrence.

(e) Coverage shall be provided at such limits and for such forms of general liability insurance, as the eligible risk may select. Such insurance shall be subject to minimum limits of \$25,000 for each claimant and \$75,000 for all claimants in any one policy year, and subject to maximum limits of \$1,000,000 for each claimant and \$3,000,000 for all claimants in any one policy year. With respect to coverage which provides for a separate limit for the liability of the insured for damage to property, such limit shall be subject to a minimum of \$25,000 per occurrence and to a maximum of \$100,000 per occurrence.

(f) Coverage shall be renewed annually at the option of the eligible risk, and such coverage shall be cancelable by the association only on the grounds of nonpayment of premium or assessment.

(g) The board shall appoint committees or contract with rating organizations or independent consulting actuaries as may be necessary to implement Ins 1703.11.

Ins 1703.12 Records and Reports.

(a) The association shall be subject to examination by the Commissioner in accordance with RSA 400-A:37.

(b) The books of account, records, reports, and other documents of the association shall be open to inspection by all other persons, including members, only at such times and under such conditions as the commissioner shall determine.

(c) The association shall make detailed reports of liability assumed or cancelled, prepare annual budgets of the association and provide an accounting to each member at least every 12 months.

(d) The board shall cause the books of account of the association to be audited at least every 12 months by a firm of independent public accountants designated by the board.

(e) The board shall cause the books of account of servicing carriers to be audited at any time by a firm of independent auditors designated by the board.

(f) The board shall examine the records of any member which relate to the subject matter of the plan of operation and shall establish the policies, records, books of account, documents and related material it deems necessary to carry out its functions.

(g) The board shall periodically require the servicing carrier to report to the board in writing, with a copy to the commissioner, said reports shall be submitted quarterly.

(h) The association shall not be subject to the premium tax provisions of RSA 400-A:31 and/or RSA 400-A:32.

Ins 1703.13 Joint Liability for Association Business.

(a) In the event that after receiving written demand from the board for payment of any assessment, any member fails, for any reason, to pay promptly its portion of any assessment, the board shall report such failure to the commissioner for appropriate action.

(b) In the event that the assessment remains unpaid beyond 90 days the board shall increase the assessment of all remaining members in order to recover the amount of unpaid assessment. The increase in the assessment shall be computed on the basis of assessment established under Ins 1703.07 with the basis of sharing adjusted to exclude the net direct premiums of the member in default.

Ins 1703.14 Indemnification.

(a) The association shall pay on behalf of any person made a party to any action, suit, or proceeding because the person is a member of the board or of a committee of the association, or because the person is an officer or employee of the association, all costs, including the amount of any judgment, including interest, settlement, fine or penalty, or expense incurred in connection with any such action, suit or proceeding including defense cost. However, such payment shall not be provided on any matter in which the person or member shall be finally adjudged to have committed a breach of duty involving bad faith, dishonesty, willful misfeasance or reckless disregard for the responsibilities of the person's office. In the event of settlement of a matter before final adjudication, payment shall be provided only upon the determination by the association that no such breach was committed.

(b) The costs and expenses of such indemnification shall be prorated and paid for by the members, each contributing in accordance with the methods of assessing members described in Ins 1703.07.

Ins 1703.15 Hearing Review.

(a) Any member who claims to have been aggrieved by any alleged failure of the association to comply with Ins 1700 or by any alleged improper act or ruling in the administration of the association may hereby request a formal hearing and ruling by the board, provided that such request shall be made within 15 days after the date of the alleged violation or improper act or ruling pursuant to RSA 400-A:17 I. The board shall hold a hearing within 15 days following receipt of the request. The hearing shall be held by a panel consisting of 3 voting board members appointed by the chairman. The ruling of a majority of the panel shall constitute the formal ruling of the board unless the full board on its own motion modifies or rescinds that ruling.

(b) Any formal board ruling may be appealed to the commissioner by notice of appeal filed with the association and with the commissioner within 30 days after the date of issuance of the ruling. The

commissioner shall issue an order either approving the ruling, disapproving the ruling, directing the board to reconsider the ruling.

(c) In the case of any hearing held by the board pursuant to Ins 1703.15 the board shall issue a ruling or order within 30 days following the hearing.

(d) Any order of the commissioner made pursuant to Ins 1703.15 shall be subject to RSA 400-A:17 II and to judicial review as provided in RSA 400-A:24.

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