

Repeal Ins 4900, effective 1-13-14 (Document #1-5-1), and hold said chapter ini reserve as follows:

CHAPTER Ins 4900 [EARLY OFFERS FOR MEDICAL INJURY CLAIMS REPORTING]
RESERVED

~~[Statutory Authority: RSA 400-A:15, I.; RSA 400-A:37; RSA 519-C:16; RSA 541-A~~

~~PART Ins 4901 MANDATORY REPORTING OF EARLY OFFERS~~

~~— Ins 4901.01 Purpose. The purpose of this chapter is to identify the rules and guidelines to be used to report the early offers made pursuant to medical injury claims.~~

~~— Ins 4901.02 Scope. This chapter shall apply to all insurers writing medical professional liability insurance in this state as well as to all entities self insured for medical professional liability.~~

~~— Ins 4901.03 Definitions.~~

~~— (a) “Claim” means a request for indemnification submitted by a health care provider pursuant to a medical professional liability insurance policy for which an insurer has established a loss or loss adjustment expense reserve amount at any point in time.~~

~~— (b) “Claim for medical injury” means any claim against a medical care provider pursuant to RSA 519-C:1.,I.~~

~~— (c) “Claim number” means a unique identifying code assigned to each claim by the insurer.~~

~~— (d) “Claimant” means an individual who, in his or her own right, or on behalf of another as otherwise permitted by law, is seeking compensation for a medical injury, due to alleged sub-standard medical care or treatment.~~

~~— (e) “Closed claim” means a claim that has been settled, or otherwise disposed of, where the insurer has made all indemnity and expense payments on behalf of the insured.~~

~~— (f) “Commissioner” means the insurance commissioner of the state of New Hampshire.~~

~~— (g) “Early offer” means an offer to pay an injured person's economic loss related to a medical injury, and reasonable attorney's fees and costs incurred in representing the injured person under this chapter. No other damages of any kind shall be included in an early offer under this chapter.~~

~~— (h) “Early offer claim” means any claim for medical injury that results in a request for an early offer.~~

~~— (i) “Economic loss” means monetary expenses incurred by or on behalf of a claimant reasonably related to a medical injury and its consequences, including actual out of pocket medical expenses, replacement services, additional payment to the claimant pursuant to RSA 519-C:7, and 100 percent of the claimant's salary, wages, or income from self employment or contract work lost as a result of the medical injury, but economic loss does not include:~~

- ~~(1) Pain and suffering;~~
- ~~(2) Punitive damages;~~
- ~~(3) Enhanced compensatory damages;~~
- ~~(4) Exemplary damages;~~
- ~~(5) Damages for loss of enjoyment of life;~~

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- ~~(6) Inconvenience;~~
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- ~~(7) Physical impairment;~~
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- ~~(8) Mental anguish;~~
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- ~~(9) Emotional pain and suffering; or~~
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- ~~(10) Loss of the following:~~
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- ~~a. Earning capacity;~~
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- ~~b. Consortium;~~
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- ~~c. Society;~~
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- ~~d. Companionship;~~
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- ~~e. Comfort;~~
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- ~~f. Protection;~~
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- ~~g. Marital care;~~
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- ~~h. Parental care;~~
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- ~~i. Attention;~~
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- ~~j. Advice;~~
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- ~~k. Counsel;~~
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- ~~l. Training;~~
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- ~~m. Guidance or education; and~~
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- ~~n. All other non-economic damages of any kind.~~

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— (j) “Insurer” means every:

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- ~~(1) Insurance company authorized to transact insurance business in this state;~~
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- ~~(2) Unauthorized insurance company transacting business pursuant to RSA 406-B;~~
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- ~~(3) Risk retention group;~~
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- ~~(4) Insurance company issuing insurance to or through a purchasing group;~~
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- ~~(5) Captive insurance company; or~~
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- ~~(6) Other person providing insurance in this state.~~

— (k) “Loss adjustment expense” means the dollars expended to defend, manage, or otherwise process a claim on behalf of the insured health care provider.

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— (l) “Medical provider” means a physician, physician's assistant, registered or licensed practical nurse, hospital, clinic, or other health care provider or agency licensed by the state, or otherwise lawfully

~~providing medical care or services, or an officer, employee, or agent thereof acting in the course of and scope of employment.~~

~~— (m) “NAIC group and company code” means the NAIC assigned 9 digit code beginning with the group 4 digit code followed by the company 5 digit code or the assigned NAIC alien number.~~

~~— (n) "Notice of injury" means written notice by certified mail provided to the medical care provider alleged to have caused a medical injury that complies with the requirements of RSA 519-C:1, VIII.~~

~~— (o) "Reasonable attorney fee" means 20 percent of the present value of the claimant's economic loss and the reasonable costs incurred in representing the injured person under this chapter.~~

~~— (p) "Replacement services" means expenses reasonably incurred in obtaining ordinary and necessary services from others, who are not members of the injured person's household, in lieu of those the injured person would have performed for the benefit of the household, but could not because of the injury.~~

~~— (q) “Reserve” means the dollar value established by the insurer as their best estimate of the dollar amount needed to cover future loss or loss adjustment expense payments.~~

~~— (r) “Severity” means the 2 digit code that identifies the relative degree or severity of injury.~~

~~— (s) "Wages" means:~~

~~(1) Monetary payment for services rendered, and the reasonable value of board, rent, housing, lodging, fuel, or a similar advantage received from the employer and gratuities received in the course of employment from others than the employer; but shall not include:~~

~~a. Any sum paid by the employer to the employee to cover any special expenses incurred by the employee because of the nature of the employment; or~~

~~b. For individuals receiving unemployment benefits pursuant to RSA 282-A:25 at the time of the injury, the rate used to determine the unemployed individual's unemployment benefit pursuant to RSA 282-A:25; or~~

~~c. For a minor who is injured prior to reaching the age of 18 and who is unable to perform any gainful work as a result of the medical injury, upon reaching the age of 18, the mean New Hampshire per capita income as shown by the American Community Survey's inflation adjusted 1-year Estimate, produced by the United States Census Bureau.~~

~~— Ins 4901.04 Detailed Reporting Requirements.~~

~~— (a) As a condition of doing business in this state, each insurer providing medical professional liability insurance coverage to a New Hampshire health care provider, and every health care provider who maintains professional liability coverage through a plan of self insurance, shall submit to the commissioner a report of all early offer claims and all subsequent activity on claims for medical injury where an early offer request was made.~~

~~— (b) Every report shall contain the following detailed information:~~

~~(1) A summary, listing the individual early offer claims included in the particular submission; and~~

~~(2) A separate form titled “Medical Professional Liability Early Offer Report” dated 12-2013 filed for each early offer claim newly opened, modified or closed during the previous 12 month period, and for which the mandatory fields, items 1 through 9f. shall be completed.~~

~~(e) Reports are due once per year and shall cover all early offer claims and all subsequent activity on claims for medical injury where an early offer request was made occurring up to and including September 30 of that year. Reports shall be submitted no later than October 15 of each year.~~

~~Ins 4901.05 Penalty. Failure to file a completed report in accordance with the provisions outlined in this rule shall result in the application of the penalty provisions of RSA 412:40.~~

~~Ins 4901.06 Confidentiality. All information collected under Ins 4901.04 regarding individual claims, loss adjustment and other expenses, reserves, indemnity payments, or other financial information that is not otherwise reported to the commissioner or available to the public, shall be treated as examination material under RSA 400-A:37, kept confidential, and not subject to RSA 91-A.~~

~~[MEDICAL PROFESSIONAL LIABILITY INSURANCE EARLY OFFER REQUEST REPORT FORMS](#)
(EXCEL DOCUMENTS)]~~

APPENDIX

RULE	SPECIFIC STATE STATUTE THE RULE IMPLEMENTS
Ins 4900 (repealed)	RSA 400-A:15, I.; RSA 412:13; RSA 412:14; RSA 412:16; 2012, 288:3