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New Jersey’s Medical Care Access and Responsibility and Patients First Act

On June 7, 2004, New Jersey Governor, James E. McGreevey, signed into law the Medical Care Access and Responsibility and Patients First Act (“Act”), designed to curb escalating medical malpractice insurance premiums. In an effort to address New Jersey’s malpractice crisis, the Act, among other things, allows an annual surcharge of $3 per employee on all New Jersey employers for each of the next three years.¹ These monies, along with other annual charges outlined below, will be deposited into a State fund and used to (1) provide relief to health care providers in New Jersey who are experiencing a liability insurance premium increase and who meet eligibility criteria; (2) provide payments to New Jersey’s Health Care Subsidy Fund for the purpose of providing payments to hospitals for the distribution of charity care subsidies; (3) allocate monies annually for a student loan expense reimbursement program for obstetrician/gynecologists; and (4) allocate monies to the New Jersey Division of Medical Assistance and Health Services in the Department of Human Services.

In mid-July 2004, the State started mailing letters to New Jersey employers advising them of this Act, billing New Jersey employers, and requesting payment by the end of August 2004.

PURPOSE AND BACKGROUND OF THE ACT — WHY NOW?

New Jersey’s health care system and its residents’ access to health care providers have been threatened by a dramatic rise in medical malpractice liability insurance premiums. This rise in premiums has created a crisis with health care providers’ ability to purchase necessary liability coverage. As a result of these increased premiums, it has been reported that doctors are retiring and/or relocating to other States where insurance premiums are lower, or they are dropping high-risk patients and procedures, and they are practicing defensive medicine in a manner that may possibly increase the cost of health care for New Jersey residents.

The Legislature decided that meaningful and prompt action was necessary and appropriate to address these issues and primarily, to ensure that high quality health care continues to be available in New Jersey.

In addition to medical malpractice liability insurance premiums, this Act also provides a comprehensive set of reforms affecting the State’s tort liability system and health care system.

HOW DOES THIS EFFECT THE EMPLOYER?

With this as the backdrop, after months of contentious lobbying, the New Jersey legislature passed and Governor McGreevey signed the Act on June 7, 2004. The central provision of the Act is the establishment of a temporary State fund to subsidize the malpractice insurance premiums for physicians in high-risk specialties. The new fund is called the Medical Malpractice Liability Insurance Premium Assistance Fund (“Fund”). In addition to the $3 per employee

¹ Under the Act, “employers” are defined as those employers subject to the New Jersey Unemployment Compensation Law.
surcharge on all New Jersey employers, the revenue for the Fund will come from the following annual charges:

- $75 to be imposed by the New Jersey State Board of Medical Examiners on every physician and podiatrist licensed by the Board;
- $75 to be imposed by the New Jersey State Board of Chiropractic Examiners on every chiropractor licensed by the Board;
- $75 to be imposed by the New Jersey State Board of Dentistry on every dentist licensed;
- $75 to be imposed by the New Jersey State Board of Optometrists on every optometrist licensed by the Board; and
- $75 fee to be assessed by the New Jersey State Treasurer and payable by each person licensed to practice law in New Jersey.

Interestingly, with respect to the universal $3 charge per employee, the Act allows employers to treat this $3 charge as an annual payroll deduction for each employee. Under the Act, the Fund and the annual surcharge, charges and fees expire three years after the effective date.

**SIGNIFICANCE**

New Jersey employers should expect a bill for payment (if you have not already received one) from the State in the near future. Even though this temporary Fund is geared towards remedying a crisis in New Jersey, employers may be faced with significant costs over the next three years. Therefore, employers should be mindful that, although the Act charges employers directly, employers may elect to deduct annually this $3 surcharge from its employee’s paycheck. Either way, notice to employees, though not required, may be appropriate.

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2 The Act permits exceptions for those individuals who are barred from the practice of their respective profession; able to show that they do not maintain a bona fide office in New Jersey; demonstrate that they retired; show they are engaged in full-time duty with the armed forces, VISTA or the Peace Corps and not engaged in practice; or show that they have not practiced their profession for at least one year. In the case of attorneys, an additional exception exists for those ineligible to practice law because they have not made their New Jersey Lawyers’ Fund for Client Protection payment.