

NOTICE TO INSURERS AND SELF-INSURERS OF MEDICAL PROVIDERS

Adopted by the NH Board of Medicine on 1/7/2009

Amended 8/6/2014

It has come to the attention of the New Hampshire Board of Medicine that insurers and self-insurers have not been complying with the statutory requirement for insurers and self-insurers to report all reservable claims to the Board of Medicine. This notice is issued by the New Hampshire Board of Medicine to advise providers of professional liability insurance of their reporting requirements. The statutory obligation is as follows:

Every insurer, including self-insurers, providing professional liability insurance to a licensee of the board shall send a complete report to the board as to all reservable claims coincident with medical injury that take place in this state or in any other state within 30 days after establishing the reserve. For the purpose of this paragraph, medical injury means any adverse, untoward or undesired consequences arising out of or sustained in the course of professional services rendered by a medical care provider, whether resulting from negligence, error or omission in the performance of such services; from rendition of such services without informed consent or in breach of warranty or in violation of contract; from failure to diagnose; from premature abandonment of a patient or of a course of treatment; from failure properly to maintain equipment or appliances necessary to the rendition of such services; or otherwise arising out of or sustained in the course of such services. NH RSA 329:17 (III) (Updated 6/28/2010)

The Board of Medicine interprets the phrase “all reservable claims” in accordance with the traditional principles of insurance law and insurance claims practice. The Board believes that the intent of the legislature in RSA 329:17 is to require reporting to the Board what the insurance industry treats as reservable claims in the normal course of business. Such reporting is not necessarily dependant on the interactions between a potential claimant, medical provider and/or insurer; it is not dependant upon a written demand, a specific dollar amount, or an individual licensee being identified in a claim. If an insurer has opened a file of any sort and has established a reserve, with regard to any medical injury, then it is required to report to the Board. Reserves set based on claims involving a health care facility must be reported if individual licensees are reasonably identifiable as individuals against whom there are claims of medical injury leading to the reserve. Reporting is not required if there is an insurance file open but no reserve set.

Failure to so report reservable claims is a violation of the statute.

This notice is based on the plain reading of the statute. This notice is not formal or informal rulemaking. As there is no current case or controversy before the Board on this issue, this is not a formal Board decision.