

IMPORTANT NOTICE TO CURRENT OR PROSPECTIVE POLICYHOLDERS

Senate Bill 170, relative to the New Hampshire Medical Malpractice Joint Underwriting Association (NHMMJUA), became law on June 16, 2011. A copy of that law is attached.

Senate Bill 170 has a direct impact on certain funds held by the NHMMJUA.

Senate Bill 170 also has a direct impact on who the NHMMJUA can assess or surcharge if the NHMMJUA has insufficient funds to pay losses and expenses.

The provisions of Senate Bill 170 that impact NHMMJUA funds and surcharges/ assessments took effect on June 16, 2011. These provisions in Senate Bill 170 now supersede any conflicting provisions in the administrative rules that govern the NHMMJUA. They may also be deemed to amend or impact conflicting provisions in your policy.

The legislation establishes a commission to study the future of the NHMMJUA. The first meeting of the commission is to be held within 45 days of the enactment of the law. The commission is required to report its findings and any recommended legislation on or before December 1, 2011.

You should review the provisions of Senate Bill 170 carefully and seek the advice of counsel if you have any questions or concerns.

CHAPTER 201
SB 170 – FINAL VERSION

03/30/11 1193s

4May2011... 1544h

1June2011... 2133h

2011 SESSION

11-0967

01/10

SENATE BILL **170**

AN ACT relative to the New Hampshire Medical Malpractice Joint Underwriting Association.

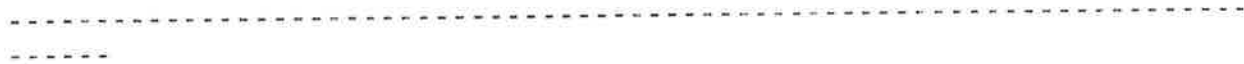
SPONSORS: Sen. Carson, Dist 14; Sen. Bradley, Dist 3; Sen. Bragdon, Dist 11; Sen. Groen, Dist 6; Sen. White, Dist 9; Sen. Lambert, Dist 13; Sen. Luther, Dist 12; Sen. Rausch, Dist 19; Sen. Stiles, Dist 24; Rep. B. Patten, Carr 4; Rep. Bettencourt, Rock 4; Rep. Kidder, Merr 1; Rep. Renzullo, Hills 27

COMMITTEE: Executive Departments and Administration

AMENDED ANALYSIS

This bill:

- I. Declares that the state shall not take or transfer, through taxation or otherwise, any funds now held by the New Hampshire Medical Malpractice Joint Underwriting Association (NHMMJUA).
- II. Requires the NHMMJUA, the insurance commissioner, and a representative of NHMMJUA policyholders to jointly approach the Internal Revenue Service to resolve any federal tax liability arising from excess surplus funds.
- III. Establishes a commission to study the future of the NHMMJUA.



Explanation: Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

03/30/11 1193s

4May2011... 1544h

1 June 2011... 2133h

11-0967

01/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to the New Hampshire Medical Malpractice Joint Underwriting Association.

Be it Enacted by the Senate and House of Representatives in General Court convened:

201:1 Statement of Purpose. The general court finds that the New Hampshire Medical Malpractice Joint Underwriting Association (NHMMJUA) is an insurance plan funded in the first instance by premiums paid by policyholders. Since 1986, the NHMMJUA has amassed more funds through premium payments than is necessary to sustain operations. Return premiums should be issued to all policyholders who have contributed to the current surplus of funds.

201:2 New Section: New Hampshire Medical Malpractice Joint Underwriting Association (NHMMJUA). Amend RSA 404-C by inserting after section 13 the following new section:

404-C:14 New Hampshire Medical Malpractice Joint Underwriting Association (NHMMJUA).

I. Notwithstanding any provision of law to the contrary, no officer or agent of the state shall take or transfer, through taxation of the New Hampshire Medical Malpractice Joint Underwriting Association (NHMMJUA) or otherwise, any funds held by the NHMMJUA on the effective date of this section in a manner inconsistent with this section. Nothing in this section shall preclude the collection of applicable state taxes, if any, owed by policyholders as a result of the return of funds referenced in this section.

II. All funds held as of the effective date of this section by the NHMMJUA in excess of the amount required for the fund to remain actuarially sound, as determined by a qualified actuary, shall constitute excess surplus funds and shall not be less than \$110,000,000 in accordance with 2009:144:1. Such determination shall be completed under the direction of the NHMMJUA board of directors not more than 45 days from the effective date of this section. All such excess surplus funds have resulted from premiums paid under assessable and participating medical malpractice insurance policies, belong to the policyholders who paid these premiums, and shall be returned as directed under this section. Within 60 days from the effective date of this section, all excess surplus funds, except for a reserve of \$25,000,000 for the payment of any federal tax liability, shall be interpleaded into the Merrimack County Superior Court, docket no. 217-2010-CV-00414 for the purpose of adjudicating all policyholders' claims to excess surplus funds. All distributions made to policyholders shall be subject to a claim from the NHMMJUA to reclaim a pro rata portion of the distribution to satisfy any federal tax liabilities in excess of the \$25,000,000 reserved for such claims.

Notwithstanding any other provision of law to the contrary, in no event shall any insurer which is a member of the NHMMJUA, as defined in Ins 1703.01(i), be assessed nor shall there be a surcharge, as provided in Ins 1703.07(f)(2), with respect to any deficit arising from the distribution of excess surplus funds described in this paragraph.

III. Within 30 days of the effective date of this section, the NHMMJUA, the insurance commissioner, or designee, and a representative of NHMMJUA policyholders, designated by the president of the New Hampshire Medical Society, shall jointly approach the United States Internal Revenue Service to obtain a closing agreement, or its equivalent, determining whether the NHMMJUA has any federal tax liability arising from the excess premiums paid and that shall be returned to policyholders.

IV. No later than 30 days after receipt of the closing agreement, or its equivalent, the NHMMJUA shall interplead into the Merrimack County Superior Court docket no. 217-2010-CV-00414 for the purpose of adjudicating all policyholders' claims to these remaining excess surplus funds the remaining amount of the tax reserve after satisfaction of any taxes owed.

V. Funds that cannot be distributed to a policyholder in the court proceedings referenced in this section due to the inability to locate the policyholder after reasonable efforts, shall revert to the NHMMJUA. Undistributed funds that revert to the NHMMJUA as provided in this section shall be used to provide grants in aid to health care providers servicing medically underserved populations to assist in the NHMMJUA coverage.

VI. The approval of the commissioner of insurance shall not be required for any action contemplated under this section.

VII.(a) Independent of the mandates of paragraphs I through VI, inclusive, which are intended to resolve historical matters, there is also established a commission to study the future of the NHMMJUA.

(b) The members of the commission shall be as follows:

(1) Two members of the senate, appointed by the president of the senate.

(2) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(3) One representative of the New Hampshire Medical Society who is or has been a policyholder of the NHMMJUA, appointed by the society.

(4) One representative of the New Hampshire Association of Domestic Insurance Companies, appointed by the association.

(5) One member of the current NHMMJUA board of directors, appointed by the board.

(6) The insurance commissioner, or designee.

(c) Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

(d) The commission shall study the NHMMJUA for the purpose of making recommendations for proposed legislation concerning its future, form, and function. The commission may solicit information from any person the commission deems relevant to its study.

(e) The members of the commission shall elect a chairperson from among the members at the first meeting. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. A

majority of the members of the commission shall constitute a quorum.

(f) The commission shall report its findings and any recommendations for proposed legislation to the president of the senate and the speaker of the house of representatives on or before December 1, 2011.

201:3 Repeal. RSA 404-C:14, VII, relative to commission to study the future of the NHMMJUA, is repealed.

201:4 Effective Date.

I. Section 3 of this act shall take effect December 31, 2011.

II. The remainder of this act shall take effect upon its passage.

Approved: Enacted in accordance with Article 44, Part II, of N.H. Constitution, without signature of governor, June 16, 2011.

Effective Date: I. Section 3 shall take effect December 31, 2011.

II. Remainder shall take effect June 16, 2011.