



STATE OF CONNECTICUT

INSURANCE DEPARTMENT

Bulletin PC-59
December 13, 2005

To: All Medical Malpractice Insurers Writing in the State of Connecticut

Re: Clarification Regarding the Scope of "Prior Acts" Under Connecticut General Statutes Section 38a-394, as Amended by Public Act No. 05-103

Effective October 1, 2005, Public Act No. 05-103, An Act Concerning Extended Reporting Period Coverage under Medical Malpractice Insurance Policies (the "Act"), sets forth requirements with respect to professional liability insurance policies issued or renewed on a claims-made basis to physicians, surgeons, hospitals, advanced practice registered nurses or physician assistants. The Act amends Conn. Gen. Stat. §38a-394 by requiring that each medical malpractice liability policy issued or renewed in this state on or after October 1, 2005 provide prior acts coverage and unlimited extended reporting period coverage at no additional charge upon the happening of certain events.

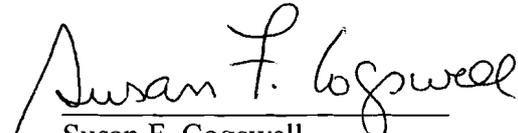
This Bulletin is intended to provide clarification concerning the Department's interpretation of the term "prior acts" as used in the Act. The Department is guided in its interpretation by Conn. Reg. §38a-327-1, *et seq.* (eff. September 25, 1992) relating to claims-made liability insurance policies. Specifically, Conn. Reg. Section 38a-327-3 sets forth the minimum standards for the issuance or renewal of claims-made liability policies.

Subsection (a) of §38a-327-3 provides the regulatory framework to assist the Department in clarifying the scope of "prior acts" coverage under the Act. Subsection (a) provides that a "retroactive date" be established between the insured and insurer. The term "retroactive date" is defined in §38a-327-1(e) and means "a date concurrent with the effective date of the policy...or a specified date prior to the effective date of the policy upon which the insurer and insured agree in the policy that coverage will be applicable." Under §38a-327-3(a), if no retroactive date is specified in the policy, coverage is afforded for injury or damage occurring prior to the inception date of the policy.

The regulatory scheme of Conn. Reg. §38a-327-3 contemplates that the insured and insurer agree upon the terms of “prior acts” coverage under a claims-made medical malpractice liability policy at the time of policy issuance. In the event a retroactive date is not established at the time of policy issuance, subsection (a) of §38a-327-3 requires that coverage be afforded for prior acts giving rise to liability that occurred at any time before policy issuance.

For purposes of interpreting the scope of “prior acts” coverage under the Act, the Department will rely on the framework established in Conn. Reg. §38a-327-3. Therefore, if a “retroactive date” has not been established between the insured and an insurer, then for medical malpractice insurance policies issued or renewed on or after October 1, 2005, the insurer is required to provide coverage for acts occurring prior to the policy effective date at no additional charge if the events set forth under subsection (b) of the Act occur during the policy period. If the insured has been offered “prior acts” coverage under Conn. Gen. Stat. §38a-394(a) and the insured does not purchase such coverage or the insured and insurer have otherwise established a “retroactive date”, the insurer will not be required to provide “prior acts” coverage at no additional charge.

Nothing herein is intended to limit or otherwise modify the requirement under the Act for insurers to provide unlimited extended reporting period coverage without additional charge if the events set forth in subsection (b) of the Act occur during the policy period.


Susan F. Cogswell
Insurance Commissioner