

TITLE 140: COMMONWEALTH HEALTHCARE CORPORATION

**SUBCHAPTER 140-10.11
MEDICAL MALPRACTICE COVERAGE RULES AND REGULATIONS**

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Subchapter Authority: 1 CMC § 2605.

Subchapter History: Adopted 27 Com. Reg. 24946 (Sept. 22, 2005); Proposed 27 Com. Reg. 24600 (June 20, 2005).

Commission Comment: PL 1-8, tit. 1, ch. 12, codified as amended at 1 CMC §§ 2601-2633, created the Department of Public Health and Environmental Services within the Commonwealth government. See 1 CMC § 2601. 1 CMC § 2603(f) grants the Department the power and duty to administer all government-owned health care facilities. 1 CMC § 2605 directs the Department to adopt rules and regulations regarding those matters over which it has jurisdiction.

Executive Order 94-3 (effective August 23, 1994) reorganized the Commonwealth government executive branch, changed agency names and official titles and effected numerous other revisions. According to Executive Order 94-3 § 105:

Section 105. Department of Public Health.

The Department of Public Health and Environmental Services is re-designated the Department of Public Health.

The full text of Executive Order 94-3 is set forth in the commission comment to 1 CMC § 2001.

Public Law 16-51 (effective Jan. 15, 2010), the “Commonwealth Healthcare Corporation Act of 2008,” codified at 3 CMC § 2801 et seq., established the Commonwealth Healthcare Corporation, which assumed the duties of the Department of Public Health as of January 15, 2011.

Part 001 - General Provisions

[Reserved.]

Part 100 - Medical Malpractice Liability Coverage

§ 140-10.11-101 Coverage Mandatory

Malpractice liability coverage is a mandatory requirement for medical staff membership at the Commonwealth Health Center.

Modified, 1 CMC § 3806(f).

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History: Adopted 27 Com. Reg. 24946 (Sept. 22, 2005); Proposed 27 Com. Reg. 24600 (June 20, 2005).

Commission Comment: The Commission created the section titles in this part.

§ 140-10.11-105 Proof of Coverage

Each physician shall provide proof to the Secretary of Public Health (“the Secretary”) that he/she has met this requirement by any one of the following means:

- (a) Indemnification by the CNMI for its government employee staff;
- (b) Proof of private medical malpractice liability insurance (occurrence type) coverage of at least \$100,000; or
- (c) Proof of other security acceptable to the Secretary and the Attorney General, in favor of the CNMI Department of Public Health (for indemnification against any financial loss, costs, expenses, or damages as a result of or related to the physician providing services), of not less than \$100,000. Possible alternative security vehicles may include:
 - (1) Surety bond;
 - (2) Letter of credit from a FDIC insured banking institution;
 - (3) Pledge of collateral;
 - (4) Escrow account with a FDIC insured banking institution.

Modified, 1 CMC § 3806(f).

History: Adopted 27 Com. Reg. 24946 (Sept. 22, 2005); Proposed 27 Com. Reg. 24600 (June 20, 2005).

§ 140-10.11-110 Privileges Prohibited Without Coverage

No physician shall be granted privileges at the Commonwealth Health Center until these requirements have been completed.

History: Adopted 27 Com. Reg. 24946 (Sept. 22, 2005); Proposed 27 Com. Reg. 24600 (June 20, 2005).

§ 140-10.11-115 Compliance Review

The Secretary shall, on an ongoing basis, review compliance. Those practitioners with privileges at CHC who do not have proof in their CHC physician files of current medical malpractice coverage as defined above will have 30 days to come into compliance with this requirement. Any practitioner who fails to comply with this requirement within the 30 day time period will have his or her hospital privileges immediately suspended, and then the case shall be referred to the Medical Executive Committee for further action, including permanent termination of privileges.

History: Adopted 27 Com. Reg. 24946 (Sept. 22, 2005); Proposed 27 Com. Reg. 24600 (June 20, 2005).

§ 140-10.11-120 Report of Claims

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All physicians with privileges at DPH government facilities must promptly report (in writing) to the DPH administration any claims, or lawsuits filed, relating to his or her delivery of medical services. When hospital privileges end for any private physician, release of the alternative financial products described above shall not be unreasonably delayed or denied, so long as there are no pending claims, or lawsuits, known to the physician or to the DPH administration relating to that physician for services performed at a CNMI government facility.

History: Adopted 27 Com. Reg. 24946 (Sept. 22, 2005); Proposed 27 Com. Reg. 24600 (June 20, 2005).

§ 140-10.11-125 Additional Requirements

The regulations in this chapter shall not supplant or affect any separate, additional requirements imposed on physicians by the Medical Professional Licensing Board.

Modified, 1 CMC § 3806(d).

History: Adopted 27 Com. Reg. 24946 (Sept. 22, 2005); Proposed 27 Com. Reg. 24600 (June 20, 2005).

**Appendix A
Medical Physician's Indemnity Bond
(Specimen)**

Bond No. _____

Premium: _____

Issue Date: _____

KNOW ALL MEN BY THESE PRESENTS: That we, (name of medical company), as Principal, both for itself and its member(s) _____ (insert names of members of the LLC) _____ and (name of bonding company), a corporation organized under the laws of the Commonwealth of the Northern Mariana Islands and authorized to execute bonds and undertakings, as Surety, are held firmly bound unto the COMMONWEALTH HEALTH CENTER, the DEPARTMENT OF PUBLIC HEALTH, GOVERNMENT of the COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, and their officers, employees and agents, hereinafter collectively called the Obligee, in an amount not to exceed the principal sum of \$(state amount here) for the payment whereof well and truly to be made, said Principal and Surety bond them, themselves, their heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Obligee has agreed to authorize and provide Medical Staff Membership and Privileges of the Commonwealth Health Center or its associate facilities to Principal;

WHEREAS, a condition of such agreement addendum thereto is that the Principal shall provide Medical Malpractice Liability Insurance and in lieu of such insurance coverage, Principal has agreed to provide a good sufficient indemnity bond in the amount stated above to indemnify the Obligee against any financial loss, costs, expenses, or damages, including, but not limited to malpractice claims, or any and all damage or loss occasioned to Obligee as a resulted* or related to Principal's provision of services, medical or otherwise, at Commonwealth Health Center or its associate facilities;

*So in original.

NOW THEREFORE, the conditions of this obligation are that the Surety shall indemnify the Obligee against failure of the Principal to faithfully defend and pay all sums of money for any and all claims, losses, costs, or injury arising out of or in relation to the provision of any services, medical or otherwise, performed at or in connection with the Commonwealth Health Center and related facilities, including but not limited to malpractice claims or damage of loss of its property;

First: That at the earliest practical moment, and in any event not later than ninety (90) days after the failure of the Principal to pay to the Obligee any sums owed pursuant to a separate indemnification agreement between Principal and Obligee for any act or acts that would cause a claim to be made under the terms of this Bond, the Obligee shall give the Surety written notice thereof, which notice shall be made to the following address:

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(list address of bonding company)

And within 90 days after such failure of the Principal, the Obligee shall file with the Surety affirmative proof of loss and shall upon request of the Surety render every assistance, not pecuniary, to facilitate the investigation and adjustment of any loss.

Second: Any suit or action to recover against the Surety on account of loss hereunder shall be brought before the expiration of 24 months from demand of Obligee against the Principal for payment of such loss but shall not be instituted before the expiration of three (3) months from the filing of proof as aforesaid.

Third: This Bond may be cancelled either by the Surety or this Obligee by written notice served upon the other, or sent by registered mail specifying therein the effective date of such cancellation, provided, however, that this notice is served or sent by the Surety, such effective date shall not be less than sixty (60) days after such service or after the date born by the sender's registry receipt. Notwithstanding a termination by either party, this Bond shall remain effective for any claim, loss or liability which may arise out of or be related to the Principal's actions during the time period in which the Bond was effective plus an additional twenty-four (24) months.

Fourth: The terms of this Bond shall be from ____ day of _____, 20__ to and including the ____ day of _____ 20__.

PRINCIPAL:
By:

SURETY:
By:

ACKNOWLEDGMENTS

COMMONWEALTH OF THE _____)
NORTHERN MARIANA ISLANDS) SS.
MUNICIPALITY OF SAIPAN _____)

On this ____ day of _____, 20__, before me, a Notary Public in and for the Commonwealth of the Northern Mariana Islands, Municipality of Saipan personally appeared _____ known to me to be persons whose names are subscribed as the authorized representatives of _____ and _____ and acknowledged to me that they executed the foregoing instrument on behalf of said corporation for the purposes and consideration contained therein.

Notary Public

Modified, 1 CMC § 3806(g).

History: Adopted 27 Com. Reg. 24946 (Sept. 22, 2005); Proposed 27 Com. Reg. 24600 (June 20, 2005).

Commission Comment: The Commission corrected the spelling of "Marianas" and "Acknowledgments."

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Appendix B Irrevocable Letter of Credit (Specimen)

To: Commonwealth of the Northern Mariana Islands Department of Public Health (DPH)
Commonwealth Health Center and related facilities
And their respective employees, assigns, and agents

REFERENCE:

Name of Company or Person authorized by DPH:\

Company ID # as assigned by the DPH:

Irrevocable Letter of Credit Number:

Effective Date:

Expiration Date:

Sir/Madam:

You have requested of [Name of Lending Institution] (the “Lender”) that we establish an irrevocable letter of credit which will remain available on behalf of [Applicant] (the “Company”) who has applied to the Department of Public Health (the “DPH”) for authority to provide medical and related services at the Commonwealth Health Center and its related facilities. The purpose of this letter of credit is to secure payment of any monetary sanction, cost, liability, or expense which may be imposed against the Company, its representatives, successors or assigns, for any loss, cost, expense, damage, or liability arising out of the Company’s activities or services, medical or otherwise, at or in connection with the grant of permission by DPH to the Company to provide services at the Commonwealth Health Center or any of its related facilities.

We hereby establish and issue, in favor of the DPH, an irrevocable letter of credit in the amount of _____ thousand dollars (\$_____), lawful money of the United States of America. The DPH may draw upon this letter of credit, at any time and from time to time, by delivering a Letter of Credit Notice, substantially in the form set forth below (a “Notice”), which Notice shall specify the amount (the “Draw Amount”) to be drawn and the bank account (the “Bank Account”) to which the Draw Amount should be delivered and shall be signed by an official designated and duly authorized by the DPH, to Lender at the address listed below, or to such other address as the Lender shall notify the DPH in writing by certified mail. Promptly after the delivery of each Notice, the Lender hereby covenants and agrees to deliver, by wire transfer of immediately available funds, the Draw Amount to the Bank Account.

This letter of credit shall be deemed automatically renewed without amendment for successive one-year periods and may be canceled by the Lender by giving thirty (30) days advance written notice by certified mail of such cancellation to the DPH and the Company, it being understood that the Lender shall not be relieved of liability that may have accrued under this letter of credit prior to the date of cancellation.

The Lender hereby represents and warrants that it is qualified and authorized to issue this letter of credit and is a bank regulated by the Federal Deposit Corporation of the United States.

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Except as otherwise expressly stated, this letter of credit is subject to the Uniform Customs and Practice for Documentary Credit (1993 Revision) International Chamber of Commerce Publication No. 500, or any revisions thereto.

Yours Very Truly,
[Name of Lending Institution]
Name:
Title:
Address of Lender:

APPROVAL AND INDORSEMENT

This is to certify that I have examined the foregoing letter of credit and found the same to be sufficient and in conformity to law and that the same has been filed with the Department of Public Health, Commonwealth of the Northern Mariana Islands, this day of _____, 20__.

Name:
Title:

FORM OF LETTER OF CREDIT NOTICE

[Name of Lender]
[Address]

Re: Irrevocable Letter of Credit No. []

Dear Sir or Madam:

You are hereby notified, and the undersigned hereby certifies, that the undersigned is an official designated and duly authorized by the DPH to deliver this notice and that a monetary sanction in the amount of \$ (the "Draw Amount") has been imposed against [Applicant], its representatives, successors or assigns, arising out of or related to [Applicant]'s services or activities at the Commonwealth Health Center or its related facilities. Pursuant to that certain Irrevocable Letter of Credit referenced above, we hereby request that you deliver payment of the Draw Amount to the bank account listed below by wire transfer of immediately available funds:

Name of Bank Account:
Account Number:
ABA Routing Number:
Reference:
Name of Contact:
Telephone Number:
Facsimile Number:

Please confirm receipt of this Notice and the Federal Reserve wire confirmation number of the delivery of the Draw Amount by sending a facsimile to the person at the number listed above.

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Sincerely,

DEPARTMENT OF PUBLIC HEALTH, CNMI

Name:

Title:

History: Adopted 27 Com. Reg. 24946 (Sept. 22, 2005); Proposed 27 Com. Reg. 24600 (June 20, 2005).