

## Massachusetts Medical Malpractice Reinsurance Plan

### Plan of Operation

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**Article I - Statutory and Regulatory Authority**

Article I - Statutory and Regulatory Authority

The Massachusetts Medical Malpractice Reinsurance Plan is a nonprofit entity created pursuant to Section 10 of Chapter 330 of the Acts of 1994, as amended.

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**Article II - Definitions**

Article II - Definitions

The following words, as used in this Plan of Operation shall have the following meanings:

- A. "Act" means Chapter 330 of the Acts of 1994.
- B. "Commissioner" means the Commissioner of Insurance of the Commonwealth of Massachusetts.
- C. "Division" means the Division of Insurance of the Commonwealth of Massachusetts.
- D. "Governing Committee" means the committee created pursuant to Section 10 of the Act.
- E. "Health Care Provider" means any category of health care provider that was authorized to obtain Medical Malpractice Insurance from the Joint Underwriting Association established by Section 6 of Chapter 362 of the Acts of 1975, including but not limited to, a doctor of medicine, osteopathy, optometry, dental science, podiatry, chiropractic, physical therapists and physical therapist assistants, or registered nurse licensed under the provisions of Massachusetts General Laws Chapter 112, an intern, fellow or medical officer licensed under the provisions of Massachusetts General Laws Chapter 112, § 9 or a licensed hospital, clinic, or nursing home, and its agents and employees, advanced practice registered nurse (APRN) also known as a nurse practitioner, physician assistant and any other category of health care provider as the Commissioner of Insurance may from time to time designate as eligible for being ceded to the Medical Malpractice Reinsurance Plan.
  - a. A "Doctor of Medicine" or "Osteopathy" means any individual licensed as a physician or osteopath pursuant to Massachusetts General Laws Chapter 112, § 2.

- b. A "Doctor of Optometry" means any person licensed as an optometrist pursuant to Massachusetts General Laws Chapter 112, § 68.

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- c. A "Doctor of Dental Science" means any person licensed pursuant to Massachusetts General Laws Chapter 112, §§ 45, 45A, 48.
- d. A "Doctor of Podiatry" means any person licensed pursuant to Massachusetts General Laws Chapter 112, §§ 16, 16 A-C.
- e. A "Doctor of Chiropractic" means any person licensed pursuant to Massachusetts General Laws Chapter 112, §§ 92, 94.
- f. A "Physical Therapist" means any person licensed pursuant to Massachusetts General Laws Chapter 112, §§ 23I.
- g. A "Physical Therapist Assistant" means any person licensed pursuant to Massachusetts General Laws Chapter 112, §§ 23J.
- h. A "Registered Nurse" means any person licensed as a registered nurse pursuant to Massachusetts General Laws Chapter 112, §§ 74, 76A, 76B.
- i. An "Intern, Fellow or Medical Officer" means any intern, fellow or medical officer registered pursuant to Massachusetts General Laws Chapter 112, § 9.
- j. A "Hospital" means any hospital licensed pursuant to Massachusetts General Laws Chapter 111, § 51, the teaching hospital of the University of Massachusetts and any psychiatric inpatient facility licensed under Massachusetts General Laws Chapter 19, § 29.
- k. A "Clinic" means any entity licensed as a clinic pursuant to Massachusetts General Laws Chapter 111, § 51.

- l. A "Nursing Home" means any entity licensed as a nursing home pursuant to Massachusetts General Laws Chapter 111, § 71.
  - m. A "Physician Assistant" means any person licensed as a physician assistant pursuant to Massachusetts General Laws Chapter
  - n. A "Advanced Practice Registered Nurses (APRN) also known as a Nurse Practitioner" means any person licensed as an advanced practice registered nurse or nurse practitioner pursuant to Massachusetts General Laws Chapter
- F. "Inactive Member" means any Medical Malpractice Insurer, which did not, in fact, issue any Medical Malpractice Insurance policies in Massachusetts during the most recent calendar year and which is not the issuing company on any outstanding Massachusetts Medical Malpractice Insurance policies.

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**Article II - Definitions**

- G. "Massachusetts Medical Malpractice Reinsurance Plan" or "Plan" means the non-profit entity established by Section 10 of the Act, as amended.
- H. "Medical Malpractice Insurance" means insurance coverage against the legal liability of the insured for loss, damage or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering or failing to render professional services by any Health Care Provider. This definition is intended to include coverage incidental to and in addition to the Medical Malpractice Insurance of any Health Care Provider.
- I. "Medical Malpractice Insurer" means any corporation that is licensed, admitted, authorized or approved to write liability other than auto insurance on risks within the Commonwealth on a direct basis. The term "Medical Malpractice Insurer" shall not include: (1) a corporation or other entity that is formed under the laws of any jurisdiction other than a state of the United States of America or the District of Columbia and that is engaged in writing (i) Medical Malpractice Insurance for the members,

shareholders or owners of such corporation or other entity, including affiliates of such members, shareholders, owners and persons employed by, affiliated with or providing professional services to such members, shareholders, owners or affiliates, and any servicing carrier thereof; or (ii) reinsurance on Medical Malpractice Insurance written by a fronting company for the members, shareholders or owners of such corporation or other entity, including affiliates of such members, shareholders, owners or affiliates, and any servicing carrier thereof; (2) a trust maintained by the University of Massachusetts to self fund medical malpractice risks; (3) a risk retention group, as defined in the Liability Risk Retention Act of 1986, 15 U.S.C. 3901; or (4) a surplus lines insurer, so-called, insuring in the commonwealth under the requirements of Massachusetts General Laws Chapter 175, § 168.

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**Article II - Definitions**

- J. "Member" means any Medical Malpractice Insurer on and after April 1, 1995, that does not qualify for inactive membership status.
- K. "Net Direct Premiums" means gross direct premiums, including any credits against premiums by virtue of the application of a deductible and any payments within a deductible or self-insured retention level made by insureds, written on risks within the Commonwealth on medical malpractice, including the Medical Malpractice Insurance component of multiple peril package policies, as approved by the Commissioner of Insurance less all premiums and dividends credited or returned to policyholders of the unused or unabsorbed portions of premiums deposited.

It is arithmetically expressed as the sum of lines 11.1 and 11.2; Column #1, entitled Net Premiums Written of Underwriting and Investment Exhibit, Part 2B – Premiums Earned of the member company's Annual Statement.

- L. "Plan of Operation" means this document and any subsequent amendments submitted to and approved by the Commissioner to govern the Plan.
- M. "Primary Insurance" means an insurance policy or policies for medical malpractice coverage other than umbrella coverage, written by a Medical Malpractice Insurer or insurers under common "control" as such term is defined pursuant to Massachusetts General Laws Chapter 175, § 206 which (i) requires a direct relationship between such insurer(s) and the insured and which requires the insurer to adjust any claim under such policies in accordance with its customary and usual practices and (ii) which policies' coverage limits ceded shall not exceed (a) \$2,000,000 per

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**Article II - Definitions**

occurrence and \$6,000,000 in the aggregate for an individual or (b) \$2,000,000 per occurrence and \$20,000,000 in the aggregate for hospital, nursing home or clinic.

- N. "Servicing Carrier" means any Medical Malpractice Insurer or Insurers, if any, designated by the Governing Committee and which meets the criteria established by the Governing Committee to issue policies of Medical Malpractice Insurance under the Plan.



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**Article III - Obligations of Members**

Article III - Obligations of Members

All Medical Malpractice Insurers as a condition of membership in the Plan shall be required to meet standards for treatment of ceded risks, claims practices and other criteria as established by the Governing Committee.

- A. Each Member shall pay an annual fee in an amount not to exceed \$1000.00 to be determined by the Governing Committee on an annual basis or from time to time, which shall be credited to the expense of operating the Plan. Each Inactive Member shall pay an annual fee in an amount not to exceed \$500.00 to be determined by the Governing Committee on an annual basis or from time to time, which shall be credited to the expenses of operating the Plan.
- B. Each Member is obligated: to remit premiums for risks ceded and to pay assessments levied against it for losses or expenses or any combination thereof incurred under policies reinsured through the Plan as established by the Governing Committee; to pay assessments levied against it for the operating expenses of the Plan as established by the Governing Committee; to pay penalties levied against it under any rules adopted by the Governing Committee; and to submit in a timely and accurate fashion all statistics, records and accounting required by the Plan.

- C. Each Member, in recognition of the absolute necessity for timely payments of balances owed the Plan may, at the discretion of the Governing Committee, pay late payment fees at the prime rate as published from time to time in the Wall Street Journal, compounded monthly for late payment of any assessment or late payment of fees levied in accordance with the Plan. Each Member may, at the discretion of the Governing Committee, also compensate the Plan for all damages and expenses incurred by the Plan as a result of the failure of any Member to pay any assessments owed the Plan which remain unpaid as of the tenth calendar day following the invoice due date, written notice of the default having been mailed by certified mail to the company by the Plan on or after the first business day

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**Article III - Obligations of Members**

following the invoice due date as used herein shall include but not be limited to the Plan's attorney's fees. Damages and expenses incurred directly or indirectly with the collection of the balance due, all costs of borrowing incurred as a result of the nonpayment, the cost of all staff time spent in connection with efforts to collect the balance outstanding, all financial losses resulting from nonpayment and all other expenses and losses relating thereto.

- D. Any Member shall be entitled to appeal to the Governing Committee any assessment, or late payment fees, damages or expenses which were levied in accordance with the Plan. However, the Member will be required to pay the amount billed by the Plan before such appeals will be considered. If the Governing Committee rules in favor of the Member, a proper adjustment, including interest at the prime rate and any damages and expenses assessed, will be made by the Plan to the Member's account. Before exercising any other right of appeal provided pursuant to the Plan's enabling legislation, the Member shall pay all amounts owed to the Plan.

With respect to Members which have failed to pay assessments, late payment fees or compensatory damages or expenses within forty-five (45) calendar days of the postmark date of the overdue payment notice, a report

will be submitted to the Division of Insurance setting forth the fact of such nonpayment for its consideration and, if it deems appropriate, action.

- E. When a Member is merged or consolidated into another insurer, or another insurer has reinsured a Member's Medical Malpractice Insurance business in Massachusetts, such Member and its successor in interest or such other insurer shall be liable for such Member's obligations hereunder.
- F. A Member may terminate its membership in the Plan as of the close of the Plan's fiscal year upon the delivery of its notice of intent to cease writing medical malpractice policies in Massachusetts and assume Inactive Member status. Termination of membership shall not discharge or otherwise affect liabilities of the Member incurred prior to the termination

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**Article III - Obligations of Members**

of membership or in any way affect the Member's obligation to make payments and assessments pursuant to the provisions of the Plan of Operation and the Member shall be charged or credited in due course with its proper share of all premium, losses and expenses allocable to it under the Plan.

- G. If any Member is declared insolvent by a court of competent jurisdiction, its membership in the Plan shall terminate as of the date it is declared insolvent, but it shall be liable to the Plan for all obligations incurred under the Plan prior to the date it is declared insolvent. The Plan shall compute the amount of such obligations in accordance with the Plan of Operation and shall be entitled to offset any liabilities of the Member to the Plan against any liabilities of the Plan to the Member.

Any unsatisfied net liability of an insolvent Member shall be assumed by and apportioned among the remaining Members of the Plan in the same manner in which underwriting results are apportioned by the Plan. The Plan shall have all rights allowed by law on behalf of the remaining Members against the estate or funds of such insolvent Member for sums due the Plan.

- H. No judgment against the Plan shall create any direct liability against the individual Members.

- I. A member company shall provide the same level and type of service, and in no event less service than the minimum standard established by the Governing Committee to policies reinsured through the Plan as they provide to policies issued voluntarily. Every member shall be bound by the Plan of Operation and all rules adopted pursuant to the Plan of Operation.

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**Article IV - Plan of Operation**

Article IV - Plan of Operation

The Plan shall perform its functions under the Plan of Operation, and in accordance with the Act.

The Plan of Operation is intended to assure the fair, reasonable and equitable administration of the Plan, and the sharing of the Plan's gains or losses in accordance with the provisions of the Act.

The Plan of Operation becomes effective upon approval in writing by the Commissioner, as provided in the Act. Amendments to this Plan of Operation may be suggested by any Medical Malpractice Insurer and may be made by majority vote of the entire Governing Committee at any time, subject to the approval of the Commissioner. Amendments to the Plan of Operation shall be deemed approved by the Commissioner if not disapproved in writing by the Commissioner within thirty days from the date such submission is received. Any change to the Plan of Operation, and any requirement of the Plan which governs the conduct of any Medical Malpractice Insurer, further defines the relationship of the Plan to such insurers or to insureds, further defines the relationship of the Plan to the Commissioner, or further defines the Plan's powers or responsibilities, shall be considered an Amendment to the Plan of Operation. All Amendments to the Plan of Operation shall be submitted to the Commissioner and shall be subject to the approval of the Commissioner.

The Plan operates for the benefit of Medical Malpractice Insurers who provide coverage to Health Care Providers as required under the Act. A Medical Malpractice Insurer may not transfer, assign, convey, or take any action which may result in the voluntary or involuntary transfer, assignment, or conveyance of the rights or duties of the Medical Malpractice Insurer to any other Medical Malpractice Insurer or any other person or entity so as to terminate any obligations, responsibilities or duties hereunder except by prior written approval by the Governing Committee which approval shall not be unreasonably withheld. Except as provided herein, the Plan and this Plan of Operation do not create or confer upon any other person any direct or indirect rights or claims or action in connection with or arising from the operation of the Plan.

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**Article V - Powers of the Plan**

Article V - Powers of the Plan

The Plan shall have the authority to:

- A. Provide reinsurance and establish rules, conditions, and procedures to carry out the requirements of the Act.
- B. Establish necessary rates, rate schedules, rate adjustments, rate classifications, credits and any other actuarial functions necessary to the operation of the Plan. Such rates, rate schedules, rate adjustments, rate classifications, credits and any other actuarial functions necessary to the operation of the Plan shall be filed with the Commissioner of Insurance and subject to disapproval under the applicable law.
- C. Assess Medical Malpractice Insurers in accordance with the provisions of the Act, and make interim assessments including setoffs or other deductions to amounts owed to or from Members as may be reasonable and necessary for expenses, claim reimbursement and other purposes.
- D. Enter into contracts as necessary or proper to carry out the duties of the Plan, including but not limited to contracts for reinsurance to cover losses generated by the Plan and contracts with similar programs of other states for the joint performance of common functions, or with persons or other organizations for the performance of administrative functions.

- E. Borrow money to affect the purposes of the Plan from financial institutions or other entities.
- F. Take any reasonable action necessary to avoid the payment of improper claims against the Plan.
- G. Sue or be sued, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against the Plan or any Medical Malpractice Insurer.

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**Article V - Powers of the Plan**

- H. Advise the Massachusetts Legislature and the Commissioner on necessary and/or desirable change in the laws under which the Plan operates.
- I. Hire such employees and consultants as are necessary to carry out the administration of the Plan.
- J. Take any other action not otherwise prohibited by law nor inconsistent with the Act which is necessary for the administration of the Plan.

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**Article VI - Governing Committee**

Article VI - Governing Committee

The Plan shall be administered by a Governing Committee appointed by the Governor of the Commonwealth of Massachusetts for terms of three years. The Governing Committee shall consist of five members representing Medical Malpractice Insurers participating in the Plan. At least three members of the Governing Committee shall be representatives of any domestic Medical Malpractice Insurer(s) and at least one member of the Governing Committees shall be a representative of a non-domestic Medical Malpractice Insurer.

The General Powers and Duties of the Governing Committee shall include:

- A. The Governing Committee shall elect a Chairman and Secretary from among its membership as well as other officers as it deems appropriate. The Governing Committee shall prepare in accordance with the powers granted it under this Plan of Operation, rules concerning the duties of officers, their terms of service, and their salaries.
- B. The votes of the Governing Committee shall be on a one person, one vote basis.
- C. A majority of the Governing Committee Members shall constitute a quorum for the transaction of business. The acts of the majority of the Governing Committee Members present or acting through proxies at a meeting at which a quorum is present shall be the acts of the Governing Committee.

- D. Authorize, review and approve reports on administration of the Plan, including audited financial reports, reports on outstanding contracts and obligations, and all other material matters.
- E. Review reports of the subcommittees established by the Governing Committee.

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**Article VI - Governing Committee**

- F. Establish and review procedures, including limitations on allowable investments and for the investment of available funds.
- G. Establish premium rates for coverage reinsured through the Plan, provided however, if the Governing Committee so determines, the rate for any classification reinsured through the Plan may be established at the same level as the voluntary rate charged by the Medical Malpractice Insurer that is ceding a risk to the Plan. Such rates, rate schedules, rate adjustments, rate classifications, credits and any other actuarial functions necessary to the operation of the Plan shall be filed with the Commissioner of Insurance and subject to disapproval under the applicable law.
- H. Determine the earned premiums, credit allowances, the expenses of Plan administration, and the incurred losses for each prior policy year, taking into account investment income and other appropriate items. To control the size of the population of the Plan, the Plan may, at the discretion of the Governing Committee, annually provide for high risk classification credits for those insurers voluntarily writing Medical Malpractice Insurance within those high risk classifications that would otherwise be disproportionately represented in the Plan.
- I. Determine if an assessment is necessary to recoup any net loss for each fiscal year. Such assessments to be governed by the terms of the Act and this Plan of Operation.
- J. Determine whether any technical corrections or amendments to the Act should be recommended to the legislature.



- K. Review, consider, and act on any matters deemed to be necessary and proper for the administration of the Plan within the powers allowed by the Act.
- L. The Governing Committee shall be granted all powers and duties necessary to carry out the operation of the Plan not otherwise listed and carry out all operating functions of the Plan unless expressly delegated by

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**Article VI - Governing Committee**

the Governing Committee. These powers and duties shall include the power to levy fair and reasonable penalties against members for noncompliance with the terms and conditions of this Plan of Operation. Any such penalty levied shall be stayed pending a member's appeal to the Governing Committee or Commissioner.

- M. The Governing Committee shall meet at least quarterly and hold other meetings upon the request of the Chairman or of three or more Governing Committee Members, at appropriate times and frequency.
- N. Meetings of the Governing Committee will be held in person or by telephone conference call or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at a meeting, and shall be conducted in accordance with the open meeting law as found in Massachusetts General Laws Chapter 30A, § 11A1/2. At meetings other than the annual meeting, the Governing Committee may also perform any of the functions authorized by the Act or this Plan of Operation.
- O. A Governing Committee Member shall be responsible for discharging his/her obligations; when the Governing Committee Member is unable to act in person, he/she shall have the right to act by proxy. A separate proxy must be executed for each meeting or other action which the member is unable to perform. The proxy will be effective only if the Governing Committee Member has filed a written proxy with the Governing Committee, designating one person to exercise all rights, powers, and obligations of the Governing Committee Member, in the Member's absence.

- P. Minutes of the proceedings of each Governing Committee meeting shall be recorded. The original of the record shall be retained by the Secretary of the Governing Committee. A copy of the minutes shall be provided to

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**Article VI - Governing Committee**

the Commissioner upon request.

- Q. The Governing Committee may establish administrative or other rules for the Plan consistent with the Act and the Plan of Operation.
- R. The Governing Committee may delegate or contract for administration of some or all of its duties or the operation of the Plan. The Governing Committee shall retain all executive powers established by the Act.
- S. Amendments to the Plan of Operation or suggestions of technical corrections to the Act shall require the concurrence of a majority of the entire Governing Committee. Amendments to the Plan of Operation shall be deemed approved by the Commissioner if not disapproved in writing by the Commissioner within thirty days from the date such submission is received. Any change to the Plan of Operation, and any requirement of the Plan which governs the conduct of any Medical Malpractice Insurer, further defines the relationship of the Plan to such insurers or to insureds, further defines the relationship of the Plan to the Commissioner, or further defines the Plan's powers or responsibilities, shall be considered an Amendment to the Plan of Operation. All Amendments to the Plan of Operation shall be submitted to the Commissioner and shall be subject to the approval of the Commissioner.
- T. Governing Committee Members may be reimbursed from the monies of the Plan for reasonable expenses incurred by them as Governing Committee Members, upon approval of such expenses by the Chairman, and a per meeting fee not to exceed five hundred dollars.

- U. The Governing Committee is responsible for hiring the employees of the Plan and for appointing legal, actuarial, and other subcommittees, to provide technical assistance in the operation of the Plan.

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**Article VII - Annual Meeting**

Article VII - Annual Meeting

An annual meeting shall be held at a location selected by the Governing Committee on the first Thursday in June, 1996 and on the first Thursday in May, 1997 and in each subsequent year, unless the Governing Committee, upon at least a 30 calendar days' notice to the Commissioner and all Medical Malpractice Insurers, designates some other date. Notice to Medical Malpractice Insurers may be by posting on the Plan's web site.

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**Article VIII - Subcommittees**

Article VIII - Subcommittees

The Chairman, with the consent of the Governing Committee may appoint such subcommittees and their members as he deems necessary. Each subcommittee will have at least one Governing Committee Member and such other representation of Medical Malpractice Insurers as the Governing Committee shall establish.

Minutes of the proceedings of each subcommittee shall be maintained by a Secretary appointed from the membership of the subcommittee. Subcommittee members may be reimbursed from the monies of the Plan for reasonable expenses incurred by them as subcommittee members, upon such approval of such expenses by the Chairman. Subcommittees will initially include the following or otherwise as deemed appropriate by Governing Committee:

A. Compliance Subcommittee

The mission of the Compliance Subcommittee is to:

1. Recommend to the Governing Committee and implement thereafter minimum standards with respect to service, reserving and overall handling of claims on behalf of the Plan, including such measures as are deemed necessary to assure the earliest and most accurate estimation of the Plan's future liabilities for incurred claims and their associated expenses;
2. Advise the Governing Committee, upon request, of its opinion with respect to claim disputes of any kind;

3. Advise the Governing Committee, upon request, of its opinion with respect to underwriting disputes of any kind;
4. Establish and implement methods of auditing the claims, risk management and underwriting practices of ceding members to insure a quality of service equal to their voluntary business, as well as compliance with the Plan and Rules of Operation; and

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**Article VIII - Subcommittees**

5. Recommend to the Governing Committee appropriate reinsurance premium rates, rate schedules, rate adjustments, and rate classifications for individuals and groups reinsured with the Plan.
6. Recommend to the Governing Committee the establishment or changes on any ceded reinsurance deductible.
7. Determine the incurred losses of the Plan on a policy year basis including amounts for incurred but not reported losses.
8. Recommend assessment methodology and assessments consistent with the Plan of Operation and the Act.
9. Recommend appropriate communication with members.
10. Act as liaison with the Legislature and Division of Insurance.
11. Fulfill other responsibilities as deemed appropriate by the Governing Committee.

**C. Investment Subcommittee**

The mission of the Investment Subcommittee is to:

1. Prepare and administer an Investment Policy Statement outlining appropriate investment vehicles for all Plan funds for recommendation to the Governing Committee.

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**Article VIII - Subcommittees**

2. Fulfill other responsibilities as deemed appropriate by the Governing Committee.

D. Operations Subcommittee

The mission of the Operations Subcommittee is to:

1. Provide administrative interpretation as to the intent of the Plan, and direction on issues referred to it by the Governing Committee or any other Medical Malpractice Insurer.
2. Identify items for which operating rules are needed and propose changes in the Plan of Operation or Rules of Operation for adoption by the Governing Committee.
3. Recommend to the Governing Committee the selection of an independent auditor for the annual audit of the Plan's operation and monitor the audit process.
4. Approve a uniform audit program to be utilized by independent auditors in their review of items related to reinsurance with the Plan and assessments for each Medical Malpractice Insurer.
5. Provide personnel oversight for the Plan through recommending personnel and administrative policies and procedures for approval by the Governing Committee and implementing approved policies and procedures.

6. Fulfill other responsibilities as deemed appropriate by the Governing Committee.

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**Article IX**

Article IX - Intentionally Omitted

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**Article X - Eligibility for Reinsurance**

Article X - Eligibility for Reinsurance

- A. Medical Malpractice Insurers may reinsure with the Plan for:
  - (1) Coverage of a Health Care Provider;
  - (2) Coverage of both claims made and occurrence policies;
  - (3) Primary Insurance.
  
- B. Identifying Health Care Providers.
  - 1. Whether an individual, partnership or corporation is a Health Care Provider is determined as of the effective date and on each renewal date thereafter of a Medical Malpractice Insurer's coverage of the Health Care Provider.
  - 2. Reinsurance is available to Health Care Providers as defined in the Plan of Operation.
  - 3. Each Medical Malpractice Insurer is responsible for determining whether an individual, corporation, partnership or other entity is a Health Care Provider as of the effective date of coverage.



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**Article XI - Procedures for Ceding Risks**

Article XI - Procedures for Ceding Risks

A. Reinsurance Rules and Premium Levels

1. Each Medical Malpractice Insurer proposing to reinsure coverage for any group or individual is responsible for ascertaining and certifying that:
  - a. The individual/group or entity is a Health Care Provider;
  - b. The Medical Malpractice Insurer's plan coverage meets all other requirements for reinsurance, and criteria established by the Plan; and
  - c. The reinsurance premium rate level payable to the Plan for that group or individual has been correctly determined in accordance with the Plan of Operation or Rules and/or procedures approved by the Governing Committee.

Each Medical Malpractice Insurer must document these determinations in reporting reinsurance census data and reinsurance premiums to the Plan as may be required by the Plan.

2. A Medical Malpractice Insurer may cede all risks which are eligible for reinsurance.

B. Notification of Reinsurance

1. For reinsurance to become effective, notice must be provided to the Governing Committee or its designee within 45 days after the effective date of coverage. Notice must include all required

information with respect to each Health Care Provider whose coverage is to be reinsured.

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**Article XI - Procedures for Ceding Risks**

2. Cession Effective Dates: December 1, 1996 - November 30, 1997

The effective date of coverage may be extended by the Governing Committee.

C. Billing and Payment

1. The reinsurance premiums charged for each Health Care Provider will be determined by the Plan and approved by the Commissioner.
2. Reinsurance bills will be handled on a "self-billed" basis. The Medical Malpractice Insurer will provide the Plan with a list of Health Care Providers reinsured, the premium for each provider (for the month(s) covered), and such other information as may be required by the Plan.
3. Reinsurance premium amounts are to be pro rated based on the number of days of coverage in the month.
4. Termination's effective prior to the end of any month will be allowed refunds for a pro rated portion of the month after the effective date of termination.
5. Reinsurance premium is due to the Plan for as long as the Medical Malpractice Insurance policy remains in force, regardless of the Medical Malpractice Insurer's ability to collect the Health Care Provider's premiums. The Plan has no responsibility for the Medical Malpractice Insurer's collection of premiums.

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**Article XI - Procedures for Ceding Risks**

D. Ceding Commission

1. For policies with an effective date of January 1, 2005 or after, the Plan will pay a ceding commission of fifteen percent (15%) of the policy premium.
2. The commission will be paid quarterly to the ceding company.
3. Endorsements will be treated as a policy with the ceding commission paid or debited quarterly.

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**Article XII - Reinsurance Claims**

Article XII - Reinsurance Claims

A. General Requirements

1. Medical Malpractice Insurers agree that they will promptly investigate, settle or defend all claims arising under the risks reinsured and that they will forward copies of such reports of investigation promptly, as may be required by the Plan.
2. Medical Malpractice Insurers will adjudicate all claims on ceded policies. They will be required to assure that their claim management practices are consistent for reinsured and non-reinsured individuals.
3. Medical Malpractice Insurers agree to use their usual case management and claims handling techniques, and other usual measures on reinsured business.
4. The Medical Malpractice Insurer shall have the responsibility to investigate, defend, negotiate settlements and arbitrate, as necessary, all claims and lawsuits related to insurance policies written by the Medical Malpractice Insurer and reinsured under this Plan of Operation. The Plan, at its own expense, may be associated with the Medical Malpractice Insurer in the defense or control of any claim, suit or other proceeding which involves or is likely to involve the reinsurance provided under this Plan of Operation, and the Medical Malpractice Insurer shall cooperate in every respect in the defense of any such claim, suit or proceeding. The Plan of Operation specifically requires that reciprocal good faith and fiduciary responsibilities shall be performed by both the Medical Malpractice Insurer and the Plan. The Plan may assume the defense, at the Plan's expense, of any claim.

**Massachusetts Medical Malpractice Reinsurance Plan**

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**Article XII - Reinsurance Claims**

Where a judgment has been entered against the Medical Malpractice Insurer which would result in a claim against the Plan by the Medical Malpractice Insurer, and the Medical Malpractice Insurer does not wish to appeal such judgment, the Medical Malpractice Insurer will nevertheless prosecute such appeal at the request of the Plan, and the Plan shall pay all the expenses thereof.

5. The Plan shall have the right to inspect the records of the Medical Malpractice Insurer in connection with reinsured individuals. The Medical Malpractice Insurer shall submit any additional information required in connection with claims submitted for reimbursement. Where required by law, Medical Malpractice Insurers shall secure necessary authorizations from insureds for this purpose.
6. If any payment is made by the Plan and the Medical Malpractice Insurer is reimbursed from another party for the same expenses, any reinsured claims shall be appropriately adjusted. The Medical Malpractice Insurer shall do whatever is necessary to preserve and secure its usual reimbursement rights.
7. No payments or damages payable by a Medical Malpractice Insurer in excess of actual damages pursuant to Massachusetts General Laws Chapter 93A or any other state or federal statute or law shall be reimbursed by the Plan without an approval by the Governing Committee.

**B Claims Reporting**

1. Within 20 days after the close of each quarter the Medical Malpractice Insurer shall furnish to the Plan the information required with respect to reinsured losses during the period. The information shall be conveyed using forms approved by the Governing Committee.

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**Article XII - Reinsurance Claims**

2. Each Medical Malpractice Insurer shall notify the Plan as soon as reasonably possible if claims for a reinsured individual are expected to exceed a level established periodically by the Governing Committee.

C. Claim Payment

1. Upon notification to the Plan that a claim has been settled or a judgement has been entered; the Plan will reimburse the Medical Malpractice Insurer.

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**Article XIII - Assessments**

Article XIII - Assessments

1. Following the close of each calendar year, the Governing Committee shall determine the premiums charged for reinsurance coverage, the Plan's expenses for administration, and the incurred losses, if any, for the year, taking into account investment income actually earned on plan accounts and other appropriate gains and losses.
2. Any net loss for a calendar year shall be recouped by assessment of Medical Malpractice Insurers of the Plan. The assessments for the preceding calendar year will be apportioned in the proportion that the Net Direct Premiums written by each Medical Malpractice Insurer during the preceding calendar year bear to the aggregate Net Direct Premiums written in the Commonwealth by all Medical Malpractice Insurers during the preceding calendar year. The Governing Committee shall establish the methodology for the assessment each year.
3. If the assessment level is inadequate, the Governing Committee may adjust ceded reinsurance thresholds, retention levels or consider other forms of reinsurance.
4. The Governing Committee will establish rules for assessments.

**Massachusetts Medical Malpractice Reinsurance Plan**

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**Article XIV - Reporting Requirements**

Article XIV - Reporting Requirements

Unless otherwise specified by the Governing Committee, the Governing Committee shall determine what information shall be required by the Plan for reinsured risks. When a change in reinsurance coverage occurs, the Medical Malpractice Insurer shall notify the Plan of such changes.



**Massachusetts Medical Malpractice Reinsurance Plan**

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**Article XV - Financial Administration**

Article XV - Financial Administration

A. Books and Records

The Plan shall maintain the books and records of the Plan so that financial statements can be prepared to satisfy the Act. Further, these books shall satisfy any additional requirements as may be deemed necessary to meet the needs of the Governing Committee and the independent auditors. Such books and records shall be open for examination to the Commissioner and all Medical Malpractice Insurers; provided, however, that all Medical Malpractice Insurers shall be subject to the same confidentiality restrictions as are set forth in Article XXI hereto.

1. The receipt and disbursement of cash by the Plan shall be recorded as it occurs.
2. Non-cash transactions shall be recorded when the asset or the liability should be realized by the Plan in accordance with statutory or generally accepted accounting principles.
3. Assets and liabilities of the Plan, other than cash, shall be accounted for and described in itemized records.
4. The net balance due to or from the Plan shall be calculated for each Medical Malpractice Insurer and confirmed as deemed appropriate by the Governing Committee or when requested by the respective Medical Malpractice Insurer. These balances should be supported by a record of each individual Medical Malpractice Insurer's financial transactions with the Plan.

These records include:

- a. Net earnings/losses of the Plan calculated in accordance with this Plan.

## **Plan of Operation**

### **Article XV - Financial Administration**

- b. Any adjustments to assessments as explained in this Plan.
  - c. The amount of reinsurance premium due to the Plan for health care providers whose coverage is ceded.
  - d. The amount of reimbursement due from the Plan for reinsured claims paid by the Medical Malpractice Insurer.
  - e. Adjustment to the amount due to/from the Plan based upon corrections to the Medical Malpractice Insurer submissions.
  - f. Interest charges due from the Medical Malpractice Insurer for late payment of amounts due to the Plan.
  - g. Other records required by the Governing Committee.
5. The Plan shall maintain a general ledger whose balances are used to produce the Plan's financial statements in accordance with statutory or generally accepted accounting principles. The balances in the general ledger shall agree with the corresponding balances in subsidiary ledgers or journals.

#### **B. Handling and Accounting of Assets and Money**

Money and marketable securities shall be kept in bank accounts and investment accounts as approved by the Governing Committee. The Plan shall deposit receipts and make disbursements from these accounts.

#### **C. Bank Accounts**

All bank accounts/checking accounts shall be established in the name of the Massachusetts Medical Malpractice Reinsurance Plan and shall be approved by the Governing Committee. Authorized check signers shall be approved by the Governing Committee.

## **Article XV - Financial Administration**

### **D. Lines of Credit**

All lines of credit shall be established in the name of the Massachusetts Medical Malpractice Reinsurance Plan and shall be approved by the Governing Committee.

Lines of credit may be obtained to pay any obligations and/or expenses which the Plan has incurred, is obliged to incur, or is reasonably expected to incur.

Such obligations and expenses may include those which the Plan is required to incur (including, but not limited to reinsurance of Medical Malpractice Insurance policies), those considered reasonable by the Governing Committee for the administration of the Plan and any other expenses reasonably related to the Plan.

### **E. Investment Policy**

All cash, other than cash needed on hand for the efficient operation of the Plan, shall be invested pursuant to the Investment Committee Investment Policy Statement rule outlining appropriate investment vehicles for the Plan.

## **Article XVI - Audit Functions**

### Article XVI - Audit Functions

- A. Audits of Medical Malpractice Insurers and Reinsurance Claims
1. Audits prescribed by the Governing Committee shall be conducted by independent auditor designated by the Governing Committee in accordance with a uniform audit program ("Standard") for Medical Malpractice Insurers, as developed by the Governing Committee. Any such person shall not be a Medical Malpractice Insurer and shall be subject to the confidentiality requirements of Article XXI. This Standard shall clearly specify all items to be audited. It shall include a certification statement form, to be completed by the auditor, to verify the completion of all prescribed procedures. A copy of this report and the certification statement shall be submitted to the Governing Committee by the auditor. The Plan may audit the records of any Medical Malpractice Insurer relating to the subject matter of the Plan of Operation and may by rule establish what policies, records, books of account, documents and related material it deems necessary to carry out its functions.
  2. The Standard may include testing of representative samples of the following:
    - a. Reinsurance claims submitted to the Plan, in particular:
      - (1) Eligibility of policies and Health Care Providers and their Medical Malpractice Insurers for reinsurance by the Plan,
      - (2) Proper determination of reinsurance claim amounts by Medical Malpractice Insurers, and
      - (3) Normal administration of claim procedures.

- b. Reinsurance premiums submitted to the Plan, including:
    - (1) Eligibility of those for whom reinsurance premium is paid, and
    - (2) Proper determination of reinsurance premiums paid.
  - c. Data submitted to the Plan for use in the calculation of assessments for net losses.
3. Random audits of records may be conducted by or under the direction as deemed necessary by the Compliance Committee, to verify the accuracy and appropriateness of reinsurance claim submissions.
  4. The frequency of audits shall be determined by the Compliance Committee. The cost of the audit of a Medical Malpractice Insurer shall be borne by that Medical Malpractice Insurer. The Governing Committee shall have the right to conduct appropriate additional audits of Medical Malpractice Insurers.
  5. All information disclosed in the course of the audit of a Medical Malpractice Insurer shall be considered privileged information by the Medical Malpractice Insurer, the auditing firm, and the Plan.
- B. Audits of the Plan

The Governing Committee shall arrange for an annual audit of the Plan conducted by an independent Certified Public Accountant approved by the Operations/Audit Committee. The Governing Committee shall make a copy of the annual audit report available to Medical Malpractice Insurers and to the Commissioner upon their request.

## **Article XVI - Audit Functions**

This audit shall include the following items:

1. The handling and accounting of assets and money for the Plan.
2. The annual fiscal report of the Plan.
3. The calculation of the premium rates charged for reinsurance by the Plan.
4. The calculation of credits, if applicable, for the Plan.
5. The calculation and the collection of any assessments of Medical Malpractice Insurers for net losses.
6. The reinsurance premiums due to the Plan and the claim reimbursements made to the Medical Malpractice Insurers.

## Article XVII - Penalties and Adjustments

### A. Penalties and Adjustments

1. Numerous factual determinations and tasks must be performed by Medical Malpractice Insurers relative to their participation in the Plan. All Medical Malpractice Insurers will exercise good faith and due diligence in all aspects of their relationship with the Plan.
2. Errors related to reinsurance include but are not limited to:
  - a. A Medical Malpractice Insurer cedes an ineligible Health Care Provider (initial placement of an ineligible Health Care Provider or failure to remove a Health Care Provider who becomes ineligible).
  - b. A Medical Malpractice Insurer cedes at an incorrect premium rate (failure to use correct Plan rates, to make a proper medical malpractice plan adjustment, and/or to apply correct rates to persons reinsured).

Reinsurance premiums for the Health Care Provider involved should be recalculated and immediate payment of additional premiums, interest, and a reasonable administrative charge must be made. Excess payments shall be refunded without interest.

- c. Medical Malpractice Insurer reinsures incorrect claim payments.

The claim will be recalculated and any amount due to the Plan will be repaid immediately, with interest and an administrative charge. Adjustments of claim payments for

amounts recovered by the Medical Malpractice Insurer under coordination of benefit, subrogation or similar provisions shall not be considered errors for which any interest or administrative charge would be due.

3. Errors related to assessments:

Medical Malpractice Insurer errors related to assessments shall require the immediate payment of additional amounts due plus interest, calculated from the date such sum should have been paid, plus any reasonable administrative charge approved by the Governing Committee.

4. Errors not listed:

All additional sums due to the Plan or from the Plan to a Medical Malpractice Insurer as a result of errors shall be paid immediately, with interest, and any applicable administrative charge.

5. Gross negligence and intentional misconduct:

If the Governing Committee determines that the nature or extent of the errors related to the use of the reinsurance mechanism or otherwise by a particular Medical Malpractice Insurer evidences gross negligence or intentional misconduct, the Governing Committee may, after notice and a hearing, terminate some or all current reinsurance for the Medical Malpractice Insurer and/or suspend the right of the Medical Malpractice Insurer to use the reinsurance mechanism for an appropriate period of time. All such actions shall require the concurrence of the Commissioner before becoming effective. The Governing Committee will ensure, to the extent possible, that the suspension or termination of reinsurance shall not adversely affect individuals already insured by the Medical Malpractice Insurer. Any Medical Malpractice Insurer



terminated pursuant to this section shall still be responsible for all current and prior policy years including assessment related thereto.

B. Interest and Administrative Charges

All interest payments required under this Article shall be calculated from the date the incorrect payment occurred or correct payment should have been made through the date of payment. The rate of interest and any administrative charges with respect to the Plan shall be established by the Governing Committee and may be waived by the Governing Committee for good cause shown. Errors reported by Medical Malpractice Insurers within 90 days of their occurrence shall not be subject to interest or any administrative charges.

Any Health Care Provider ceded to the Plan shall be an aggrieved Health Care Provider under Massachusetts General Laws Chapter 175A, § 7 with respect to any filing. Any Health Care Provider ceded to the Plan shall be an authorized representative under Massachusetts General Laws Chapter 175A, § 11 with respect to any rate or rating system that affects its members.

Except as otherwise provided for proceedings under Massachusetts General Laws Chapter 175A, any Medical Malpractice Insurer and any other person aggrieved by any unfair, unreasonable or improper act or practice resulting from the operation of the Plan, or as a result of the conduct of any other Medical Malpractice Insurer, may request relief from the Governing Committee. Any such person may appeal to the Commissioner from any ruling or decision of the Governing Committee with respect to the requested relief, and the Governing Committee may on behalf of the Plan apply to the Commissioner for relief with respect to any act or practice of any Medical Malpractice Insurer with respect to the operation of the Plan. If the Governing Committee fails to issue a ruling or decision on any request for relief within thirty days after the request is made, the aggrieved person may proceed in the same manner as if his request had been rejected. Upon a finding by the Commissioner of any unfair, unreasonable or improper act or practice resulting from the operation of the Plan or as the result of the conduct of any Medical Malpractice Insurer, the Commissioner may order for such person relief which need not be consistent with the operation of the Plan or the provisions of the Plan of Operation. Nothing in this provision shall affect the power of the Commissioner as otherwise permitted by law.

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**Massachusetts Medical Malpractice Reinsurance Plan**

**Plan of Operation**

**Article XIX - Claims and Causes of Action**

Article XIX - Claims and Causes of Action

- A. The Plan (as opposed to the Governing Committee, Medical Malpractice Insurers of the Governing Committee and the Medical Malpractice Insurers with whom they are affiliated, Health Care Provider Medical Malpractice Insurers which are or have been Members of the program, and any and all other persons and parties) is exclusively responsible for any and all claims and causes of action of any kind arising out of establishment and operation of the Plan, including but not limited to any civil, criminal, or administrative proceedings.
- B. Except and unless specifically provided herein, this Plan does not create or confer upon any party any new or additional claims or causes of action, criminal or civil liability, or penalty against the Members of the Governing Committee and the Medical Malpractice Insurer with whom they are affiliated, or any Medical Malpractice Insurers which are or have been Medical Malpractice Insurers of the Plan, in connection with establishment, operation, administration, management, oversight, or participation of or in the Plan, including but not limited to the establishment of rates or any joint or collective action taken under or required by the Act or this Plan of Operation.

**Massachusetts Medical Malpractice Reinsurance Plan**

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**Article XX - Indemnification**

Article XX - Indemnification

The Plan shall indemnify, by appropriate insurance or otherwise, each member of the Governing Committee, each member of any other committee or any subcommittee,

every officer and employee of the Plan, and the estate, executor, administrator, heirs, legatees and devisees of any such person, against all judgments including interest, fines, amounts paid or agreed upon in settlement, reasonable costs and expenses including attorney fees, and any other liability that may be incurred as result of any claim, action, suit, or proceeding prosecuted or threatened to be prosecuted, or on account of any act performed or omitted or obligation entered into, if done or omitted in good faith without intent to defraud and within what the person or member reasonably believed to be the scope of employment or authority and for a purpose which was reasonably believed to be in the best interest of and in connection with the administration, management, conduct or affairs of the Plan, the Governing Committee or any other committees and, with respect to any actions or proceedings under Massachusetts General Laws Chapter 176D, had no reasonable cause to believe that the conduct was unlawful. Provided, however, that if any such claim, action, suit, or proceeding is compromised or settled, it must be done with the prior and express approval of the Governing Committee.

- (1) Such indemnification may include payment by the Plan of expenses incurred in defending a civil action or other proceeding in advance of the final disposition of such action or proceeding, upon receipt of an undertaking by the person or member indemnified to repay such payment if the person or member shall be adjudicated not to be entitled to indemnification under this section. Such advance payment shall be made only if authorized by the Governing Committee.
- (2) Such indemnification shall not depend upon whether or not such person is a member of the Governing Committee, or any committee, subcommittee, or an officer or employee of the Plan at the time such claim, action, suit or proceeding is begun, prosecuted or threatened, nor on whether the liability to be indemnified was incurred or the act or omission occurred prior to the adoption of this Plan of Operation.

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**Article XX - Indemnification**

- (3) The right of indemnification hereunder shall not be exclusive of other rights such persons may have as a matter of law or otherwise.
- (4) In each instance in which a question of indemnification hereunder arises, determination of the right to indemnification hereunder, and of the time,

manner, and amount of payment thereof, shall be made by the Governing Committee. In the event that a majority of the members of the Governing Committee are seeking indemnification hereunder as a result of the same occurrence, such determination in the first instance shall be made by the remaining disinterested directors and the number of such remaining directors shall constitute a quorum solely for the purposes of this subsection. Nothing in this paragraph is intended to make an adverse determination finally binding upon the person seeking indemnification under this section, or to preclude any such person from appealing an adverse determination, or from instituting legal proceedings to enforce a right of indemnification under this section.

- (5) The indemnification provided for in this section shall be deemed to be an expense of the Plan.

**Massachusetts Medical Malpractice Reinsurance Plan**

**Plan of Operation**

**Article XXI - Confidentiality**

Article XXI - Confidentiality

The Plan, its officers, agents and employees, shall maintain the confidentiality of all information pertaining to Insureds, Health Care Providers and Medical Malpractice Insurers, in accordance with all applicable statutes, regulations and principles of common law pertaining to confidentiality and trade secrets. Such information shall be used only for the purposes necessary for the operation of the Plan, and shall be strictly segregated from other records, data, and operations of the Plan. Unless specifically

required under the Plan, under the Act, or under other applicable laws, no information shall be retained or used by the Plan of Operation, or disclosed to any third party, if it identifies a specific Insured, Claimant or Medical Malpractice Insurer. All information disclosed between the Plan and each Medical Malpractice Insurer, in connection with this Plan of Operation, shall be considered to be proprietary information of the Medical Malpractice Insurer and the Plan. Any information specifically identifying a Health Care Provider reinsured in the Plan shall be kept confidential and not disclosed by the Plan to any persons other than the Medical Malpractice Insurer issuing a policy to such Health Care Provider.

Nothing in this provision shall affect the power of the Commissioner as otherwise permitted by law.

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<b>Massachusetts Medical Malpractice Reinsurance Plan</b> <b>Plan of Operation</b> <b>Article XXII - Amendment, Termination, Effective Date</b>	

Article XXII - Amendment, Termination, Effective Date

A. Amendments

Amendments to this Plan of Operation may be suggested by any Medical Malpractice Insurer and may be made by majority vote of the entire Governing Committee at any time, subject to the approval of the Commissioner. Amendments to the Plan of Operation shall be deemed

approved by the Commissioner if not disapproved in writing by the Commissioner within thirty days from the date such submission is received. Any change to the Plan of Operation, and any requirement of the Plan which governs the conduct of any Medical Malpractice Insurer, further defines the Plan's powers or responsibilities, shall be considered an Amendment to the Plan of Operation. All Amendments to the Plan of Operation shall be submitted to the Commissioner and shall be subject to the approval of the Commissioner.

B. Termination

The Plan shall continue in existence subject to termination in accordance with the requirements of a law or laws of the Commonwealth of Massachusetts or The United States of America. In case of enactment of a law or laws which, in the determination of the Governing Committee and the Commissioner, shall result in termination of the Plan, the Plan shall terminate and conclude its affairs. Any funds or assets held by the Plan following the payment of all claims and expenses of the Plan shall be distributed to the Medical Malpractice Insurers of the Plan at that time in accordance with the then-existing assessment formula.

C. Effective Date

The Plan of Operation shall become effective upon approval by the Commissioner.