§ 2343. Medical malpractice insurance rates; special additional provisions regarding such rates. (a) Whereas the provisions of a chapter of the laws of nineteen hundred eighty-five regarding medical and dental malpractice will have both a prospective and retrospective effect upon the loss experience of physicians, dentists and hospitals professional liability insurers, including the medical malpractice insurance association, the superintendent is directed forthwith to review rates previously in effect for the period commencing July first, nineteen hundred eighty-four and ending June thirtieth, nineteen hundred eighty-five, and, where appropriate, require modification of such rates for such period.

(b) Any such modified rate shall remain in effect as a provisional rate for the period commencing July first, nineteen hundred eighty-five and ending on November thirtieth, nineteen hundred eighty-five. The superintendent, subsequent to December first, nineteen hundred eighty-five, shall approve final rates for the period commencing July first, nineteen hundred eighty-five and ending June thirtieth, nineteen hundred eighty-six. No insurer shall have the duty to file for final rates for the period commencing July first, nineteen hundred eighty-five prior to December first, nineteen hundred eighty-five.

(c) Notwithstanding any other provision of this chapter, no application for an order of rehabilitation or liquidation of a domestic insurer whose primary liability arises from the business of medical malpractice insurance, as that term is defined in subsection (b) of section five thousand five hundred one of this chapter, shall be made on the grounds specified in subsection (a) or (c) of section seven thousand four hundred two of this chapter at any time prior to December thirty-first, two thousand twenty-eight.

(d) The superintendent shall promulgate a regulation, which may be amended from time to time, establishing a physicians professional liability insurance merit rating plan applicable to medical malpractice insurance coverage whether written as an individual policy or through a voluntary attending physician ("channeling") program previously permitted by the superintendent which reflects an individual physician's or surgeon's experience with respect to incidents or occurrences of alleged medical malpractice. The regulation shall establish standards and limitations intended to insure that merit rating plans are

reasonable and are not unfairly discriminatory, inequitable, violative of public policy or otherwise contrary to the best interests of the people of this state. Such regulation shall include:

(1) reasonable standards to be applied in arriving at premium rates, surcharges and discounts based on an evaluation of the hazards of the insured, geographical area, specialties of practice, past and prospective loss and expense experience for medical malpractice insurance written and to be written in this state, trends in the frequency and severity of losses, and the limited nature, if any, of the practice of the insured;

(2) rules for recognizing experience of individual risks;

(3) any other factors deemed relevant in a system of merit rating for the purpose of establishing equitable merit rates.

The superintendent shall also consider, in establishing such regulation, whether premium rates unfairly burden physicians who are initiating their practice, those who are transitioning to retirement or those who practice part-time or hold academic positions.

Insurers shall review merit rating plans which were approved by the superintendent prior to the promulgation of the regulation required by this subsection and shall, before January first, nineteen hundred eighty-six, file with the superintendent statements that their merit rating plans conform with the regulation, or file an appropriate plan or amendments to their existing plans which will bring them into compliance with the standards of the regulation. Any such amendments shall become effective upon approval by the superintendent.

(e) The superintendent may approve an appropriate premium reduction for an insured physician who successfully completes a risk management course, which must be approved by the superintendent subject to such standards as the superintendent may prescribe by regulation. In prescribing such regulation the superintendent may consult with the commissioner of health.