*** § 3436. Medical malpractice insurance; type of coverage.** (a) Every insurer which issues or renews policies for primary levels of medical malpractice insurance covering physicians licensed to practice in this state shall issue such policies on a claims-made or occurrence basis, as prescribed by the superintendent by regulation; provided, further, that nothing in this section shall preclude any insurer from applying otherwise applicable underwriting standards in determining whether to issue or renew such policies.

(b) A claims-made policy shall contain the following provisions:

(1) if the insured has purchased a claims-made policy from an admitted insurer for a period of five or more consecutive years and the insured, after attaining the age of sixty-five or older, retires permanently and totally from the practice of medicine or if the insured has purchased such a policy for a period of ten or more consecutive years, and the insured, after attaining the age of fifty-five or older, retires permanently and totally from the practice of medicine, the insurer shall, without charging an additional premium therefor at the time of, or subsequent to, such retirement, also cover all occurrences between the inception date of the first such consecutive policy from such insurer and such retirement date which, subsequent to the termination date, are reported in accordance with statutory and policy requirements;

(2) if the insured dies or becomes permanently disabled and unable to practice medicine while covered by such a policy, the insurer shall, without charging an additional premium therefor at the time of, or subsequent to, such event, also cover all occurrences between the inception date of the first such consecutive policy from such insurer and the death or disability of the insured; and

(3) the insurer shall make available and shall advise the insured of the availability and cost of coverage for occurrences between the inception date of the first such consecutive policy from such insurer and the termination of such policy which, subsequent to the termination date, are reported in accordance with statutory and policy requirements, pursuant to such terms and conditions as may be specified by the superintendent by regulation. The insured shall have the option of purchasing such coverage either in a single payment, or in three annual installments with an additional finance charge.

(c) Such regulation shall also provide that if the coverage of an

insured who continues to practice in this state is transferred from an admitted insurer or the medical malpractice insurance association to another admitted insurer or the medical malpractice insurance association without any gap in coverage, the former entity shall pay over to the successor an actuarially appropriate dollar amount to provide for the requirements of subsection (b) of this section, and the insured shall be entitled to the benefits of such subsection as if such insured had been continuously covered by the successor entity during the entire period of consecutive years of coverage.

(d) Such regulation shall also provide that if the coverage of an insured is transferred from an insurer in liquidation to another insurer not in liquidation without any gap in coverage, then the successor entity shall accept the amounts payable from the property-casualty insurance security fund as provided in subparagraph (G) of paragraph one of subsection (a) of section seven thousand six hundred three of this chapter, to provide for the requirements of subsections (b) and (c) of this section, and the insured shall be entitled to the benefits of such subsections as if such insured had been continuously covered by the successor entity during the entire period of consecutive years of coverage.

(e) An insurer may issue a claims-made policy with more liberal policy provisions than are required in this section, subject to the approval of the superintendent. Such liberal policy provisions may include but not be limited to a provision which, for all of the policyholders of the insurer, grants credit toward the cost of the coverage provided in subsection (b) of this section in proportion to the number of years the insured has purchased a claims-made policy.

* NB There are 2 § 3436's