The Department of Business Regulation (“Department”) hereby adopts amendments to Insurance Regulation 21 effective November 21, 2013 and makes this statement in accordance with R.I. Gen. Laws § 42-35-2.3. The Department makes these amendments in order to require licensed medical and dental professionals and licensed health care providers to be covered by professional liability insurance and to establish the minimum limits therefore. The amendments also make provision to allow entities with sufficient financial resources to self-insure for medical malpractice. There are seven differences between the text of the proposed rule as published in accordance with R.I. Gen. Laws § 42-35-3 and the rule as adopted. Those differences are:

1. Section 1 – In response to a comment a reference to R.I. Gen. Laws § 42-14-2.3 was added.
2. Section 2 – In response to comments the terms used for those required to purchase medical malpractice insurance were changed for clarity and a parenthetical regarding R.I. Gen. Laws § 27-16-2.6 was added.
3. Section 3 – In response to comments definitions of active health care professional, department and teaching hospital were added and the definitions of health care facility and medical malpractice insurance were clarified.
4. Section 4 – In response to comments the proposed addition of the word “residual” in section 4(A)(2) was not made and clarification of ex officio board member was added to 4(G).
5. Section 5 – In response to comments A and D (now C) were rewritten to clarify the persons required to purchase medical malpractice insurance; references to coverage through R.I. Gen. Laws § 27-16-2.6 entities and permissibly self-insured entities were added to A, C (now B) and D (now C); proposed section B was removed and the last portion of section F (now E) was removed.
6. Section 6 – In response to comments the initial sentence was rewritten for clarity, proposed section B was eliminated in its entirety and the last portion of section E (now D) was eliminated.
7. Section 7 – In response to comments the section was reordered to create a distinction between entities that fall under R.I. Gen. Laws § 27-16-2.6 and those that apply for permission to self-insure and section C was rewritten to clarify the type of employment and affiliate relationships intended to be included.
The Department received other comments which it declined to address by changes in the regulation. Those comments were as follows:

- A commenter suggested combining the definitions of “medical or dental professional” and “provider of healthcare.” Although the Department agrees that one definition of health care professionals consistent throughout the regulation would be preferable, the change would result in numerous additional Department of Health licensees being required to purchase coverage. The legislature chose to use only the words “medical” and “dental” in the statute. None of the covered persons are licensees of this Department and it is impossible for us to determine the consequences of expanding the requirement beyond physicians and dentists. Other commenters have raised serious concerns about such consequences. The Department will, of course, revisit this requirement if the legislature or Department of Health provides specifics regarding other licensees it intends to cover.

- Insurers can continue to issue policies to health care providers not covered by the mandatory requirements of the statute in limits less than $1 million/$3 million and may issue supplemental or excess policies. The requirements in section 6 of this regulation relate only to the policies to be issued on a primary basis to the medical or dental professionals to which this regulation applies.

- The regulation is not intended to place licensed carriers at a competitive disadvantage with surplus lines carriers. As mentioned above, the restrictions on insurance policies are only applicable to the primary policy issued to the medical and dental professional that is required to have medical malpractice insurance under the terms of R.I. Gen Laws § 42-14.1-2. All such policies must be issued by a licensed carrier.

- One commenter expressed an opinion that sections 5 and 6 are redundant. Section 5 is intended to apply to physicians and dentists that must purchase insurance while section 6 is intended to apply to insurance companies issuing the policies.

- One commenter suggested a higher deductible limit for those insureds that purchase as a group. Group purchasing is not addressed by statute and the Department does not have a definition of a “group” to which a higher deductible could apply.