Discussion Points

1. In recent years, the availability and affordability of medical malpractice liability insurance has become a significant public issue in this State. Physicians in certain high-risk specialties, such as radiology, neurosurgery, orthopedics, obstetrics and gynecology, have experienced rapidly escalating rates and increased premiums.

In response, the Legislature passed an omnibus reform bill, the "New Jersey Medical Care Access and Responsibility and Patients First Act" P.L. 2004, c.17, which became law in June, 2004. That act provides for a comprehensive set of reforms affecting the State's tort liability system, health care system and medical malpractice liability insurance carriers intended to ensure that health care services continue to be available and accessible to residents of the State.

In addition, the act established the Medical Malpractice Liability Insurance Premium Assistance Fund (MMLIPA), the purpose of which is medical malpractice liability insurance premium relief for certain health care providers in the State who have experienced or are experiencing a liability insurance premium increase in an amount as established by the Commissioner of Banking and Insurance by regulation.

The MMLIPA fund is comprised of revenue from $3 annual surcharges paid on or by employees who are subject to the "unemployment compensation law" and $75 annual surcharges paid on the professional licenses of physicians, podiatrists, dentists, chiropractors and attorneys, unless exempted under the law.

The act further provides that the fund, which will expire in July, 2007, be administered by the Department of Banking and Insurance. The act provides that in each of the three years of its operation, the MMLIPA fund shall distribute a total of $26.1 million annually, allocated as follows: $17 million for premium relief to eligible health care providers who have experienced or are experiencing a premium increase; $6.9 million for the Health Care Subsidy Fund; $1 million for a student loan expense reimbursement program for obstetricians/gynecologists who agree to practice in medically underserved areas of the State for a minimum of four years; and $1.2 million for the NJ Family Care program to enroll new mothers with income up to 100% of the federal poverty level whose postpartum eligibility for Medicaid has expired. The Governor's Budget Recommendation estimates that revenue will total $20.59 million in FY 2005 and $21.6 million in FY 2006.

Question: **Given that revenues in FY 2005 and FY 2006 are anticipated to come in at less than the $26.1 million annually allocated pursuant to P.L. 2004, c.17, please indicate the amounts that will be allocated from the MMLIPA fund to each of the following: premium relief; Health Care Subsidy Fund; student loan reimbursement program; and NJ Family Care program.**

Please indicate the amount of revenue generated from the respective surcharges, by category, for FY 2005.

Approximately how many physicians applied for reimbursement? How did the Commissioner of Banking and Insurance allocate the premium relief funds? What is the average amount of reimbursement per physician? Please classify these numbers by physician specialty. Does the

department consider the annual $17 million allocation to be sufficient to provide physician medical malpractice liability insurance premium relief?

Response: Monies collected under the New Jersey Medical Care Access and Responsibility and Patients First Act through the Medical Malpractice Liability Insurance Premium Assistance Fund will be used for the following purposes: (1) medical malpractice liability insurance premium assistance (implemented by the Department of Banking and Insurance); (2) the Health Care Subsidy Fund (charity care) (administered by the Department of Health and Senior Services); (3) a student loan reimbursement program for obstetrician/gynecologists (implemented by the Higher Education Student Assistance Authority); and (4) Medicaid/FamilyCare (implemented by the Department of Health and Senior Services).

The Legislature projected that $26.1 million would be collected annually under the Act for all those purposes, with $17 million annually set aside for the medical malpractice premium subsidy fund. Collection efforts are enforced by other agencies, such as the Division of Consumer Affairs, the Treasury and Department of Labor and Workforce Development.

As of April 5, 2005, only $19,896,123 has been collected for this year, leaving a shortfall of just over $6.1 million. The collections can be broken down as follows: $15.8 million from employers; $2.4 million from health care professionals; and $1.7 million from attorneys. If no additional monies are collected and if the funds are split proportionally between the different projects, the subsidy fund would receive about 65% of the collected monies or approximately $12.9 million; the Health Care Subsidy Fund (charity care) would receive about 26% of the collected monies or approximately $5.1 million; the student loan reimbursement program would receive about 4% of the collected monies or approximately $800,000; and Medicaid/FamilyCare would receive about 5% of the collected monies or approximately $1 million. Unless a determination is made that the medical malpractice premium subsidy fund should receive its full allotment of $17 million, the Department could have $4.1 million less to distribute than anticipated.

Please indicate the amount of revenue generated from the respective surcharges, by category, for FY 2005.

Employee Surcharge	$15,773,106
Doctor Assessments	$ 2,420,474
Attorney Assessments	$ 1,702,543

Approximately how many physicians applied for reimbursement? How did the Commissioner of Banking and Insurance allocate the premium relief funds? What is the average amount of reimbursement per physician? Please classify these numbers by physician specialty.

The application process has not yet commenced, so a precise answer to the above three questions cannot be given.

Last fall, the Department promulgated regulations (N.J.A.C. 11:27-7, et seq.) that implement the New Jersey Medical Care Access and Responsibility and Patients First Act. These regulations set forth the process in accordance with the legislation for implementing the Medical Malpractice Liability Insurance Premium Assistance Fund and distributing the subsidy funds.

Each year, for the three year life of the program, the Department, after consulting with the Department of Health and Senior Services, is to make a determination of what specialties/subspecialties should receive a subsidy from the Fund. The factors to be considered in that determination are the level of premium increase faced by a specialty/subspecialty and whether there are an insufficient number of doctors practicing in that specialty/subspecialty such that access to care is threatened for New Jersey patients. The Act permits the premium increase factor to be waived on a determination that access to care is threatened.

On the premium increase issue, the Department has collected premium data from medical malpractice carriers for the years 2001-2004. The Department's access to care analysis considered data concerning physician supply obtained from the Rutgers Center for State Health Policy, as well as from individual health care practitioners and physician specialty groups.

On February 3, 2005, based on an analysis of all information received, and after consultation with the Commissioner of Health and Senior Services, the Department issued a Public Notice which set forth the Department's preliminary determination as to which doctors are eligible for the fund. The Department concluded that obstetrics/gynecology (excluding practices limited to gynecology only), neurological surgery, and diagnostic radiology (limited to radiologists who read mammograms) are eligible specialties. In accordance with the Act, the Department based this preliminary determination on a finding that access to care was threatened due to an insufficient number of practitioners in those particular specialty/subspecialty to practice in certain geographic areas of New Jersey.

Interested parties were invited to submit comments by March 7, 2005, on the preliminary determination, including whether other specialties/subspecialties should be added to the list of eligible doctors. The Department received many comments, including suggestions that other specialties/subspecialties be eligible for the fund. The Department is currently reviewing those comments and has requested additional information from several commenters. The Department has also been holding meetings and conference calls with these specialists in order to gather additional information. After the Department completes its review of the information, it will consult with the Department of Health and Senior Services and issue a Final Order establishing the classes of doctors eligible to receive subsidy funds. Once the Order is issued, eligible doctors will be permitted to apply for the subsidy. Applications will be available on the Department's website; only those doctors in the specialties/subspecialties set forth in the Order will be allowed to apply. At present, the Department hopes to issue the Order and begin accepting applications this summer.

The amount of the subsidy per doctor will ultimately depend on the amount of revenue generated from the assessments (less administrative expenses) divided by the number of eligible practitioners that apply. Obviously, the fewer doctors that are eligible and apply, the larger the amount of the subsidy per individual.

Does the department consider the annual $17 million allocation to be sufficient to provide physician medical malpractice liability insurance premium relief?

Response: It is difficult to make that determination at this time as the Department is in the process of reviewing the various comments received and other additional information in preparation of the Final Order. The Department can say, however, that assuming the full $17 million was collected, it would represent roughly 3% of the total amount of premium dollars paid overall by doctors, so it's possible that additional dollars could be needed to address access to care issues. As the above example shows, if the size of the subsidy fund was $17 million, as anticipated by the Legislature, a rough approximation of the subsidy a health care professional could receive is approximately $8,500. That amount would be significantly less, $6,450, if the size of the Fund stays at or about $19.8 million. It would seem that $17 million would be the minimum allocation necessary to provide substantive relief to health care professionals, some of whose premiums can exceed $150,000.

2. In August, 2003, the Department of Banking and Insurance permitted a newly admitted property/casualty insurer to begin using insurance scoring as one factor in setting premium rates for private passenger automobile insurance policies. The department also stated at the time that the experience of this one insurer would be assessed to determine whether expansion of insurance scoring practices would be beneficial to New Jersey residents in terms of the availability of automobile insurance through increased competition. In April, 2004, the department issued Advisory Bulletin No. 04-05, which advised property/casualty insurers that, after an extensive review of this practice, filings by insurers incorporating insurance scoring will be considered by the department, provided that certain specified consumer protections are maintained.

> ***Question:*** **What impact has the decision to allow insurance scoring to be used as a factor in setting automobile insurance premiums had on the availability of automobile insurance to New Jersey residents? Has the decision resulted in an increase of availability of automobile insurance in urban areas of New Jersey, as this was one rationale for allowing insurers to use insurance scoring?**
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> **Please provide the names of all insurers approved to use insurance scoring, and indicate which of these insurers moved into the State following the April, 2004 decision to allow insurance scoring. Please also indicate the number of consumer complaints that the department has received to date, related to an insurer's use of insurance scoring as a factor in setting automobile insurance rates.**

Response: The auto reform legislation approved by the Legislature in 2003 was designed to create a mainstream regulatory environment and attract new companies to the State. In an effort to further that goal, DOBI issued guidelines in April 2004 for the use of insurance scoring for private passenger auto rating. These guidelines contain many consumer protections that restrict a company's use of insurance scoring. Since that time, filings from 20 companies have been approved. Three companies, Esurance, Mercury, one of the fastest growing auto insurance companies in the nation, and Geico, the nation's fifth largest private passenger insurer, have entered the market since DOBI began approving the use of insurance scoring. Two other companies, State Farm, the State's fourth largest insurer, and AIG have decided to remain in New Jersey, after previously receiving approval to withdraw. AIG has been approved to use insurance scoring. State Farm, has not currently filed to use the practice, but it remains an important part of its national rating program.

There is no doubt that these five companies have created more options and provided more availability for New Jersey consumers. Companies are now granting new agent appointments, including Mercury who has granted several appointments to agents in urban areas. Allstate, a leading insurer of urban drivers, began using insurance scoring in 2004 and increased the number of its agents writing auto insurance. In addition, the presence of Geico and Esurance gives consumers access to insurance immediately via the internet. Consumers without home computer access can utilize this technology in public libraries and DOBI consumer centers in Camden and Newark.

Prior to approving the use of insurance scoring, DOBI reviewed the practices of over 40 states that already allow the practice. After consulting with and incorporating suggestions from consumer groups, including NJ Citizen Action and NJ Public Interest Research Group (PIRG), and among others with an interest in the issue, DOBI was able to craft guidelines that strike a balance between permitting unbridled competition and protecting the interests of consumers. Moreover, the Department prohibited companies from using insurance scoring with both the Dollar-A-Day and Basic policies. The guidelines further include innovative protections that require companies to limit the rate impact for existing customers who have been claim and accident free for seven years. They also limit the annual rate impact due to credit. The guidelines also require companies to make exceptions for consumers who have experienced extraordinary life events such as the death of a close family member, temporary loss of employment, divorce, catastrophic illness or injury, or identity theft.

With over five million vehicles insured in the state, the number of complaints received concerning insurance scoring has been relatively small. DOBI has received approximately 70 inquiries regarding the use of insurance scoring since its introduction into the market.

NEW Insurance Scoring Filings
Private Passenger Automobile

	Company	New Companies after 4/2004 Effective Date
1	Foremost Ins Co. (Motorcycle/Off-Road/Motorhome ONLY)	
2	Mercury Indemnity Company of America	
3	GEICO Group	8/16/2004
4	Allstate NJ	
5	Selective	
6	First Trenton	
7	Metropolitan Direct Metropolitan Group	
8	NJ Skylands Ins Co / NJ Skylands Ins Assoc	
9	AIIC of DE	2/4/2005*
10	Amica Mutual Ins Co	
11	Liberty Mutual Fire Liberty Insurance Corp	
12	Founders Ins Co	
13	Hanover NJ Insurance Company	
14	Palisades Safety and Insuance Association	
15	Palisades Insuance Company	
16	IFA Insurance Company	
17	High Point Preferred Ins Co.; High Point Safety and Ins Co. and High Point P&C Ins. Co.	
18	Parkway Insurance Company	
19	Encompass Ins Co of New Jersey	
20	Esurance Insurance Company	3/29/2005

date of order dismissing order allowing withdrawal from the market

3. The Stock Workers' Compensation Security Fund and the Mutual Workers' Compensation Security Fund were merged into one fund, the Workers' Compensation Security Fund (WCSF), pursuant to P.L.2004, c.179. The WCSF was created because many mutual insurance carriers have either demutualized or formed mutual holding companies with stock operating companies and there are fewer mutual carriers among which to spread an assessment.

The WCSF is funded through assessments levied against stock insurance carriers writing workers' compensation business in the State. The WCSF year end FY 2005 balance is estimated to be $29.4 million. The FY 2006 budget (p. H-37) estimates the WCSF fund balance to decrease $1.8 million by the end of FY 2006.

> ***Question:*** **Please provide an analysis of expected WCSF revenue and expenditures for FY 2006. Please include the amount estimated to be paid from the WCSF for claims in FY 2006 and the number of insolvent companies with outstanding claims and the value of these claims.**

Response: The Department prepared information for the FY 2006 Budget in October 2004 for the then separate Stock and Mutual Worker's Compensation Funds. This past year, the funds were merged per a statutory change. The anticipated fund balance for July 1, 2006, is $36,086,585. Projected revenues for FY 2006 were $13,950,000 for total funds available of $50,036,585. Projections for anticipated expenditures for FY 2006 were originally estimated to be $15,700,000. Recently we have learned from the Compensation Rating and Inspection Bureau that two more insurers, State Capital Casualty Reciprocal Insurance Company and Equity Mutual Insurance Company, have become insolvent. These insolvencies were not included in the estimated amount therefore that amount will likely increase to $30,000,000 for FY 2006.

4. Pursuant to P.L.2004, c.49 a special interim 1% assessment was established on health maintenance organizations in FY 2005 to partially fund payments from the Health Care Subsidy Fund for charity care. According to the Departments of Banking and Insurance and Treasury at the time the legislation was enacted, based on the 2004 premium data, the assessment would generate $51.1 million. However, the departments indicated that $13.7 million of this amount included assessments on Medicaid HMO premiums, which the State must reimburse to Medicaid HMO's. Taking into account the State's reimbursements, the total obtained for HCSF charity care payments was expected to total $37.4 million.

> ***Question:*** **Please indicate the amount of premium assessment revenue that has been collected to date for the Health Care Subsidy Fund. Please indicate the total amount expected to be obtained from the assessments for FY 2005.**

Response: Assessments were mailed April 1, 2005, and are due on April 29, 2005. The anticipated revenue is $53,853,858.

5. The Governor's proposed budget recommends funding a total of 510 positions for the Department of Banking and Insurance, compared to a revised FY 2005 position count of 490 (Budget, page D-27.). The proposed budget would thus provide funding for 20 additional positions.

> ***Question:*** **Please provide a detailed summary of how many new employees the department expects to hire, where these employees will be allocated within the department, and when it is expected that these positions will be filled.**

Response: As a part of the Governors budget the Department has been asked to reduce its workforce by 1%. This will reduce the number of funded positions to 505.

The information in the budget was from Pay Period 20, September 2004. As of March 29, 2005, the Department had 495 filled positions with seven positions reserved for employees on unpaid leave pending their return. We plan to fill an additional three positions which are listed below.

Program	Unit	Title
Licensing & Regulatory Affairs	Ombudsman	Ombudsman Insurance
Actuarial Services	Life & Health	Actuary
Administrative Services	Commissioner's Office	Commissioner

The actuary position should be filled in the next 90 days. The Commissioner's office position most likely will be filled during the next administration, and there are no current plans to fill the Ombudsman's position.

Summary

Authorized budget count per budget book	510
Change due to 1% Plan	- 5
Balance available	505
Filled as of March 28, 2005	-495
Available to be filled	10
Reserved for staff on unpaid leave	7
To be filled	3
Total	10

6. The "Automobile Insurance Cost Reduction Act," P.L.1998, c.21 (AICRA) established the Office of Insurance Claims Ombudsman, which is charged with the responsibility to: investigate consumer complaints regarding insurance policies and the payment of claims; monitor the implementation of various insurance regulations; respond to consumer inquiries about policy provisions and coverage availability; and publish and distribute buyers' guides and comparative rates. In FY 2004, the Office of the Insurance Ombudsman was re-organized by the department. As detailed in the budget (p. D-27), in FY 2005, the number of insurance consumer complaints received decreased from 1,475 to 650; complaints resolved decreased from 1,221 to 700; inquires handled decreased from 11,601 to 2,000; and funds recovered on behalf of consumers decreased from $2.6 million to 2.0 million. Further, for FY 2006, the budget estimates that $2.1 million will be recovered for consumers, which is a $4.4 million decrease from the FY 2003 recoverable funds.

> ***Question:*** **Please explain the current nature and duties of the Office of Insurance Ombudsman. Please indicate how the original responsibilities of the Office have been reallocated within the department.**
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> **Given the decreases in recoverable funds and consumer inquiries handled by the Office of the Ombudsman, what does the department foresee as the future role and impact of the Office of the Insurance Ombudsman?**

Response: The Ombudsman Unit is providing services to New Jersey consumers consistent with the original statutory responsibilities of the Ombudsman, including market trend review and research, consumer guide research and publication, and consumer outreach. Two staff members provide full time outreach programs throughout New Jersey in areas such as homeowner insurance, auto insurance, long term care, and the use of credit in insurance. These two staff members average 15 presentations a month at community centers, schools, libraries, Motor Vehicle service centers and Senior Centers. Five investigators in the Trenton Office and one supervisor handle responses to Commissioner emails (35 per month) Group Ombudsman Email (30 per month), consumer assistance calls not handled through the Consumer Complaint Unit (120 per month) and complex and time sensitive investigations. These investigations are handled by the Ombudsman Unit because they require more detailed review and technical knowledge than routine complaints. The following are the types of investigations referred to the Ombudsman Unit:

1. Comparative negligence for auto insurance accidents
2. Mandated health benefit issues (e.g. Infertility, BBMI, specialized infant formulas)
3. Homeowner cancellations and nonrenewals with invalid notice or time sensitive
4. Commercial cancellations and nonrenewals with invalid notice or time sensitive
5. Oil tank claims and difficulties obtaining coverage
6. Automobile availability for eligible persons
7. Urgent/time sensitive/ emergency Issues
8. Internal Appeal Reviews pursuant to NJSA 17:29E-1 et seq
9. Insurance scoring issues
10. Homeowner's mold claims
11. "Watch List" companies – These are companies that have been identified as having specific issues related to certain business practices (e.g. delayed claim settlements, improper claim denials)

In addition to the outreach staff and Trenton operations, the Ombudsman has oversight responsibility for the Department's two field offices in Camden and Newark. These offices provide consumer outreach programs and consumer assistance both by phone and in person for Banking, Real Estate and Insurance matters. The Ombudsman provides oversight and training for these staff members.

It should be noted, however, that the role of the Ombudsman has not been filled as a separate position. The Manager of the Office of Consumer Protection Services also fills the role of Acting Ombudsman.

It should also be noted that, while currently performing functions consistent with the original responsibilities of the Ombudsman, Unit staff had been reassigned in FY 2004 and part of FY 2005 to duties more typical of those performed by staff in the Consumer Complaints Unit. This was because the volume of calls and complaints regarding the availability of auto insurance had increased dramatically. In addition, due to staffing shortages, the number of staff available in the Consumer Complaints Unit had declined. To ensure proper service to our consumers, the staff members of the Ombudsman Unit were asked to discontinue other duties such as market trend review and research and consumer guide research and publication and were used to handle the overflow of written complaints as well as the incoming phone calls on auto availability. This temporary increase in complaint handling volume resulted in the temporary increase in numbers recorded in those fiscal years.

With more insurers entering the New Jersey auto market, more trained investigators to replace positions vacated in prior years within Consumer Complaints, and less need for a temporary "patch" to handle the overflow of complaints and phone calls, the Unit has returned to its original duties.

Consumer recoveries have risen. They totaled $5,375,778 in FY 2005 (thru 2-28-05). The FY 2004 total was $4,996,940.

The Department foresees the Ombudsman Unit continuing on its present course, which appears to be achieving goals consistent with those originally proposed for the Ombudsman.

7a. On November 1, 2004, the Commissioner of Banking and Insurance issued Order No. A04-151, seeking information from 30 major New Jersey insurance brokers regarding contracts, compensation, agreements and business practices involving insurers. An internal task force to assimilate the information was also established by the department to investigate the matter. Additionally, in January, 2005, the Commissioner ordered 18 insurance companies operating in the State to submit information and documents outlining compensation and fee arrangements with their clients within 60 days. This order extends to all states in which the 18 companies write business in accordance with other state insurance regulators working in conjunction with the National Association of Insurance Commissioners (NAIC). These initiatives are a result of allegations in the media concerning fraudulent, anti-competitive and otherwise unlawful practices that have resulted in harm to consumers in the placement and issuance of insurance coverage. In particular, investigators are interested in knowing whether brokers have been steering insurance buyers to companies that pay undisclosed commissions to the broker.

> ***Question:*** **Please outline the status of the task force's evaluation of the State's 30 largest brokers. What is the status of the request made of the 18 insurance companies? Has the task force concluded its review of the information submitted? If so, what are its conclusions? When is the task force expected to report its findings?**
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> **Has the department received complaints from New Jersey consumers concerning the type of activities which are currently under investigation? What are the department's prior findings in their examination process concerning these types of activities? What has been the department's enforcement role regarding unfair broker practices? Are staffing levels sufficient to ensure adequate enforcement?**

Response: The Department has reviewed information supplied by these brokers and has, in some cases, requested additional details of fee agreements with clients to determine whether disclosure of insurer compensation was made in accordance with our regulations. There is no evidence of bid-rigging activity and unlawful "steering" of business by New Jersey based producers according to the information reviewed and uncovered to date. We are currently reviewing the information recently received from 18 nationally significant insurance companies, and are participants with other state insurance departments in a nationwide review of industry practices through the NAIC.

The Department has considered the evaluation to be in the nature of an investigation and all confidential information remains available to the Attorney General's Office and may be shared on a more limited basis with the NAIC.

The Department has consistently enforced its existing regulations governing broker fees, disclosures and unfair trade practices. Even prior to the investigation of New York brokers by New York Attorney General Elliot Spitzer, the Department investigated, took formal administrative action and sanctioned producers for charging improper fees and failing to make appropriate disclosures to consumers. While prior market conduct examinations have revealed instances of improper broker fees, bid-rigging and patterns of "steering" have not been revealed in the past. In cases where market conduct examinations or enforcement investigations have revealed violations related to broker fees, depending on the severity of the violation, responsible producers have had their licenses revoked or suspended, have been fined and/or required to pay restitution. The

Department will, of course, continue to investigate such practices in conjunction with enforcement investigations and in the course of market conduct examinations. As has been the experience with a number of other state insurance departments and despite the Department's outreach efforts and publicity surrounding this matter, New Jersey has not received consumer complaints regarding bid-rigging, "steering" or inadequate/improper broker compensation disclosures.

Given the ability to temporarily utilize investigators, examiners and staff from other areas of the Department to investigate suspect broker activity and in view of the Attorney General's offer of staff support on an ad hoc basis, present staffing levels should be sufficient to ensure enforcement in this area.

7b. The NAIC has released draft model legislation that would implement new disclosure requirements designed to ensure consumers are provided the information necessary to understand the manner in which brokers are compensated for the sale of insurance products. According to NAIC's website, www.naic.org, the draft is part of an ongoing effort by state insurance regulators to address issues surrounding the use of compensation arrangements by insurance brokers.

> ***Question:*** **Does the department believe that New Jersey's current regulatory scheme is sufficient to protect consumers? Will the department recommend any legislative initiatives as the result of its investigation in this regard?**

Response: New Jersey's current regulatory scheme is sufficient to protect the vast majority of consumers. It requires insurance brokers that charge fees to consumers to enter into written agreements and disclose whether they are also receiving compensation from insurers. There are, however, limitations in the current regulatory scheme that may not provide the appropriate level of protection to all consumers, as the present regulations do not require brokers to disclose specific details regarding the amount of compensation or the type of compensation arrangements in place with insurers. For this reason, the Department contemplates proposing revisions which will likely be based upon amendments to the Producer Model Licensing Act recently adopted by the NAIC. Such changes will either be in the form of amendments to regulations or recommendations for statutory changes. The Department intends to examine the marketplace implications of any contemplated revisions prior to making proposals.