



**State of New Jersey**  
DEPARTMENT OF BANKING AND INSURANCE  
PO Box 325  
TRENTON, NJ 08625-0325  
TEL (609) 292-5360

JON S. CORZINE  
*Governor*

STEVEN M. GOLDMAN  
*Commissioner*

**BULLETIN 07-13**

**TO: ALL INSURERS AUTHORIZED TO TRANSACT BUSINESS IN NEW JERSEY, HEALTH SERVICE CORPORATIONS, HEALTH MAINTENANCE ORGANIZATIONS AND ORGANIZED DELIVERY SYSTEMS**

**FROM: STEVEN M. GOLDMAN, COMMISSIONER**

**RE: USE OF SIDE AGREEMENTS AND CHANGES IN TEXT TO PROVIDER AGREEMENTS**

It has recently come to the Department's attention that some health insurance carriers may be engaging in the practice of using "side agreements" to amend one or more terms of their provider agreements that had previously been filed and approved by the Department of Banking and Insurance (Department) and/or by the Department of Health and Senior Services (DHSS), while other carriers may be changing the text in previously approved provider agreements without submitting the changes for approval. Such side agreements and changed text may include, but are not limited to, attempts by the carrier to reduce a provider's rate of compensation by using "most favored nation" clauses, substantial parity representations, or other clauses or agreements that change the language of approved provider agreements.

On August 11, 2004, DHSS's Office of Managed Care (OMC) issued OMC Bulletin 2004-02 ([http://www.state.nj.us/dobi/acrobat/omc/bulletin04\\_02.pdf](http://www.state.nj.us/dobi/acrobat/omc/bulletin04_02.pdf)) reminding health carriers of the legal prohibitions upon the use of unapproved revisions and side agreements to amend a provider agreement previously filed and approved by DHSS. Reorganization Plan No. 005-2005 filed with the New Jersey Legislature by Acting Governor Richard Codey on June 30, 2005, effective August 29, 2005, transferred sole jurisdiction and regulatory authority over all of the laws previously codified at N.J.S.A. 26:2J-1 et seq., 26:2S-1 et seq., and N.J.S.A. 17:48H-1 et seq. from DHSS to the Department, and transferred the operations of the OMC to the Department. On October 28, 2005, the Department issued Bulletin 05-23 ([http://www.state.nj.us/dobi/bulletins/blt05\\_23.pdf](http://www.state.nj.us/dobi/bulletins/blt05_23.pdf)) to all carriers previously under the regulatory jurisdiction of DHSS to provide guidance during the

transition. That Bulletin advised carriers that all bulletins, enforcement actions, and other administrative actions issued by DHSS through its OMC continued to have full force and effect. Accordingly, this Bulletin reminds carriers that the positions stated in OMC Bulletin 2004-02 on the use of unapproved revisions and side agreements remain in effect and will continue to be enforced by the Department.

Carriers are further reminded of their statutory obligation to obtain the Department's prior approval of all provider agreements and all amendments thereto. It should additionally be noted that the requirement to obtain such approval is not limited to only those amendments characterized by carriers as "material," or those amendments initiated by the carrier rather than the provider. Rather, all amendments to provider agreements are subject to the Department's prior approval. The Department's prior approval authority is established in the following statutes. N.J.S.A. 17B:27A-54 authorizes the Commissioner to approve the establishment of selective contracting arrangements entered into by **insurance companies** operating pursuant to Title 17B of the New Jersey statutes with health care providers. N.J.S.A. 17:48E-10a requires **health service corporations** to file copies of proposed agreements with participating physicians with the Commissioner. N.J.S.A. 26:2J-3d(1) requires that **HMOs** shall, in the absence of a rule relieving them of the obligation to do so, file a notice with the Commissioner describing any modification of a provider contract that was submitted with the HMO's application for a certificate of authority. N.J.S.A. 17:48H-4e and 17:48H-6a require **certified organized delivery systems** to file a copy of the standard form of any provider agreement, and any material modification to any provider agreement, with the Commissioner for approval. Finally, N.J.S.A. 17:48H-12e and 17:48H-14a require **licensed organized delivery systems** to file a copy of the standard form of any provider agreement, and any material modification to any provider agreement, with the Commissioner for approval.

Carriers are on notice that all side agreements intended to amend an approved provider agreement and all changes to the text of an approved provider agreement are subject to prior approval by the Department. Any questions regarding this Bulletin may be directed to the Office of the Assistant Commissioner, Life & Health at (609) 292-5427 or [gsimon@dobi.state.nj.us](mailto:gsimon@dobi.state.nj.us).

6/19/07  
Date

/s/ Steven M. Goldman  
Steven M. Goldman  
Commissioner