

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Pharmacy Benefit Cards

Adopted New Rules N.J.A.C. 11:4-55

Proposed: April 19, 2004 at 36 N.J.R. 1873(a).

Adopted: October 20, 2004 by Holly C. Bakke, Commissioner, Department of Banking and Insurance

Filed: October 20, 2004 as R. 2004 d.433, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1 and 17B:30-39.

Effective Date: November 15, 2004.

Expiration Date: November 30, 2005.

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) received written comments from the following: Richard Santoro, Executive Director, New Jersey Council of Chain Drug Stores and Michelle K. Guhl, President, Association of Health Plans.

COMMENT: One commenter supports the rule because it will facilitate the interaction of pharmacists and patients by enhancing the ability to obtain covered prescriptions in a more timely and efficient manner.

RESPONSE: The Department appreciates the expression of support for the rules.

COMMENT: One commenter stated that N.J.A.C. 11:4-55 states that additional cards may be issued to other persons included under the primary insured's coverage. The commenter supports

this proposal for two reasons. First, it will be beneficial to consumers because issuing cards to both the primary insured and the dependents will provide consumers with more convenience and mobility than sharing a single card. Secondly, it will be safer and reduce liability for pharmacists if the patient who is purchasing the prescription is the one who will be taking the medication. This type of direct contact will facilitate helpful discussion regarding a prescription's potential side effects or interaction with other medications.

RESPONSE: The Department appreciates the positive response. The Department encourages insurers to issue multiple cards where appropriate.

COMMENT: One commenter stated that N.J.A.C. 11:4-55.2(c)1, 2 and 4 contain the language "when required for proper claims adjudication." The commenter requests this language be removed from the proposal since requiring the information to which the phrase pertains and making it available on all cards improves consistency. The commenter stated that processing delays can be avoided should a health plan decide to change their processing requirements (that is, group number now required), which does happen occasionally.

RESPONSE: The Department does not agree that the language should be removed. The enabling statute explicitly requires the information to be included to the extent necessary for proper claims adjudication. Thus the revision suggested in the comment would render the rule inconsistent with the controlling statute.

COMMENT: One commenter recommended an addition to N.J.A.C. 11:4-55.2(c)7, specifically that the telephone number required to be included be a toll free number.

RESPONSE: The Department does not agree that a toll-free number is required to realize the intent of N.J.S.A. 17B:30-36b(7), which refers only to “the telephone number that providers may call...”. Moreover, given the additional costs attendant upon toll free numbers, the revision suggested in the comment would constitute a substantive change which cannot be made upon adoption. See N.J.A.C. 1:30-6.3.

COMMENT: One commenter recommended adding text to N.J.A.C. 11:4-55.2(c) in a new paragraph (c)8 to include the phrase: “any additional information required for adjudicating a claim.” The commenter stated this addition would ensure the goal of facilitating a consistent and less burdensome billing process that limits the need for phone calls to the insurer.

RESPONSE: The Department notes that the suggested language submitted by the commenter is set forth in the underlying statute at N.J.S.A. 17B-30-36(b)8, and will make the change upon adoption. The Department notes that it is possible that additional information may be required, either now or in the future, to adjudicate a claim.

COMMENT: One commenter noted that N.J.A.C. 11:4-55.4 requires that, if a card has not been issued or if the information does not reflect the insurer’s current coverage, the provider must furnish the primary insured with a telephone number that can be used to obtain the information that should be on the card. The commenter supports this provision because it will further enhance the customer service relationship between providers and patients.

RESPONSE: The Department appreciates the positive comment.

COMMENT: One commenter noted that N.J.A.C. 11:4-55.5 mandates that every health benefits provider issuing a card must make an informational filing of the form of the card with the Department within 30 days after issuing or causing a card to be issued. The commenter understands that the Department needs to maintain such records in order to track this law's progress. The commenter applauded the Department in pursuing the rule because it will modernize and improve the practice of pharmacy, and serves to promote the intent of the new law in New Jersey.

RESPONSE: The Department appreciates the expression of support for the rule.

COMMENT: One commenter noted that, under the definitions section at N.J.A.C. 11:4-55.1, the language indicates that the ANSI identification number on the card be labeled as "RxBIN." The commenter stated that some plans do not necessarily use that precise lettering. They note that one carrier labels the number as "BIN#." The commenter requested the Department recognize that all plans do not use an identical label and that it modify the proposal to allow for slightly different labeling.

RESPONSE: The Department does not believe that a modification of the proposal is necessary, because proposed N.J.A.C. 11:4-55.2(c)2 requires that all pharmacy benefit cards need only contain "the ANSI identification number (properly labeled), when required for proper claims adjudication." So long as the ANSI identification number that appears on the card permits proper claims adjudication, the card would be in compliance with the rule, notwithstanding that the number was not preceded by the exact label "RxBIN."

Federal Standards Statement

There are no Federal statutes or rules that apply to the subject matter of these adopted new rules. Therefore, the adopted new rules do not contain standards or requirements that exceed standards or requirements imposed by Federal law. No further Federal standards statement is required.

Summary of Change upon Adoption:

The Department is adding text to N.J.A.C. 11:4-55.2(c) to add a new paragraph (c)8. The addition will make this section consistent with identical language contained in N.J.S.A. 17B:30-36(b)8.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

11:4-55.2 Requirement to issue cards

(a) – (b) (No change from proposal.)

(c) Until such time as State or Federal regulations are adopted pursuant to the “Health Insurance Portability and Accountability Act of 1996,” P.L. 104-191, specifying data elements that may be used in place of the information listed below, the following information must, subject to (e) and (f) below, appear on all pharmacy benefits cards:

1. – 5. (No change from proposal.)

6. The insured’s name; ***[and]***

7. A telephone number for provider’s to call for pharmacy benefits assistance

***, and**

***8. Any other information necessary for proper claims adjudication, except for information provided on the prescription as required by law or regulation*.**

(d) – (f) (No change from proposal.)

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