

ADOPTION SECTION

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

Notice of Administrative Correction

Notice of Adoption

Personal Injury Protection Benefits; Medical Protocols; Diagnostic Tests; Personal Injury Protection Dispute Resolution

Adopted Amendments: N.J.A.C. 11:3-4.2, 4.4, 4.7, 4.8, 5.4, 5.10 and 5.11

Take notice that in the notice of adoption of amendments to N.J.A.C. 11:3-4.2, 4.4, 4.7, 4.8, 5.4, 5.10 and 5.11, published in the July 6, 2010 New Jersey Register at 42 N.J.R. 1385(a), the New Jersey Department of Banking and Insurance (Department) inadvertently omitted comments received on the proposal. The comments were submitted by the law firm of Celentano, Stadtmauer and Walentowicz, LLP on behalf of Meridian Health System and The Valley Hospital. Below is a summary of the comments and the Department's responses.

COMMENT: The commenter supported the Department's decision to expand the types of services that can be provided through insurers' voluntary networks to include services, equipment and accommodations for ambulatory surgeries. The commenter also strongly supported the Department's decision to include Ambulatory Surgical Centers (ASCs) as part of the voluntary networks to provide these services.

RESPONSE: The Department appreciates the support.

COMMENT: The commenter noted that the addition of ASCs to the types of medical benefits that can be part of an insurer's network is a significant departure from existing regulations. The existing regulations identified the types of services, MRIs and CAT scans, for example, that may be provided through voluntary networks. The adopted amendments now permit a network for a type of provider, that is, an ASC. The commenter recommended allowing a voluntary network to contract with any facility where "ambulatory surgeries" are performed. This would permit hospitals to participate in such networks.

RESPONSE: The Department agrees with the commenter that permitting networks for "ambulatory surgeries" is more consistent with the way voluntary networks are characterized in the existing regulation. The Department will make the change in a future rulemaking.

COMMENT: The commenter noted that the adopted amendments to N.J.A.C. 11:3-4.4(d) would authorize insurers to include within their policy limits any ODS access fees paid for billed charges in excess of \$10,000. The commenter stated that this would reduce the amount of personal injury protection (PIP) benefits available to provide treatment to the insured. The commenter stated that the existing \$250,000 PIP medical expense benefit is inadequate for persons who sustain significant injuries as a result of automobile accidents. The commenter urged the Department not to allow the ODS access fee to be included in policy limits.

RESPONSE: The Department does not agree with the commenter. The Department believes that permitting insurers to include the access fee in policy limits for billed

charges in excess of \$10,000 will provide more treatment for insureds, not less. Insureds get more treatment for their claim dollar through an ODS. The inclusion of the access fee in policy limits provides an incentive for insurers to promote use of the ODS in such cases. The Department will monitor the use of this provision to determine if it is producing the anticipated benefit to insureds.

COMMENT: The commenter stated that Department's decision to allow insurers to include the ODS access fee within policy limits does not appear to be authorized by statute. The commenter cited the definition of 'medical expense' in N.J.S.A. 39:6A-2(e).

RESPONSE: The Department does not agree with the commenter. N.J.S.A. 39:6A-4 states the PIP policy form, "shall set forth the benefits provided under the policy, including eligible medical treatments, diagnostic tests and services *as well as such other benefits as the policy may provide...*" (emphasis added). Pursuant to this statute, the Commissioner can determine the benefits to be provided under the policy, including ODS access fees as permitted by the regulation.

COMMENT: The commenter supports the Department's proposal to amend N.J.A.C. 11:3-5.4 to provide an accelerated process for making payments to medical providers.

RESPONSE: The Department appreciates the support.