

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

Third Party Administrators

Proposed Amendments: N.J.A.C. 11:23-1.2, 5.3, and 5.6

Authorized By: Kenneth E. Kobylowski, Acting Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and 17B:27B-1 et seq.

Calendar Reference: See Summary below for explanation of exception to the calendar requirement.

Proposal Number: PRN 2012-085.

Submit comments by August 17, 2012 to:

Robert Melillo, Chief
Legislation and Regulation
Department of Banking and Insurance
20 West State Street
PO Box 325
Trenton, NJ 08625-0325
Fax: 609-292-0896
E-mail: legsregs@dobi.state.nj.us

The agency proposal follows:

Summary

The Department is proposing amendments to its rules on third party administrators (TPAs) of health benefits and third party billing services (TPBSs) to clarify the application of N.J.S.A. 17B:27B-1 et seq., which requires the licensure or registration of TPAs and the certification of TPBSs, by revising the definition of “benefits payer.” Currently, N.J.A.C. 11:23-1.2 states that the term benefits payor, “...means an insurer authorized to issue health or dental benefits plans in this State, or any other person who undertakes to provide and assumes financial risk for the payment of health or dental benefits and is obligated to pay claims for health or dental benefits to providers or other claimants.” The Department notes that pursuant to N.J.S.A. 39:6A-4, insurers who provide private passenger automobile insurance are required to provide personal injury protection (PIP) benefits to covered persons and, consequently, become health benefit payers. It has come to the Department’s attention that there may be some third party billing services who are currently billing automobile insurers, but are not certified because they did not recognize that the definition of benefit payers quoted above also applies to such insurers. Therefore, the Department is proposing amendments to these rules as follows:

The Department is proposing to amend N.J.A.C. 11:23-1.2 to include a definition for “automobile insurer.” The Department is also amending the definition of “benefits payer” to provide that, for the purposes of certification of third party billing services only, “benefits payer” shall also include automobile insurers. As a result of these amendments, currently uncertified TPBSs that become certified will be subject to the reporting, recordkeeping, and compliance requirements imposed by N.J.A.C. 11:23-5. These include the requirements to: retain all written agreements with clients imposed by N.J.A.C. 11:23-5.6; maintain separate accounts for all clients on whose behalf the TPBS accepts monies from health benefit payers imposed by

N.J.A.C. 11:23-5.7; and report material changes in information previously supplied to the Department imposed by N.J.A.C. 11:23-5.8.

N.J.A.C. 11:23-5.3 sets forth the information to be filed with the Commissioner by an applicant for certification as a TPBS. Paragraph (a)4 requires that such information include a description of the procedure for prompt submissions of claims pursuant to the provisions of N.J.S.A. 17B:30-23 and N.J.A.C. 11:22-3. That paragraph is proposed for amendment to provide that the claims submissions are to a benefits payer other than an automobile insurer.

N.J.A.C. 11:23-5.6(b), setting forth what the written agreement between a TPBS and a client is to include, is also being amended at paragraph (b)3 to add the phrase “to a benefits payer other than an auto insurer” after “submission of claims” for provisions setting forth the respective liability of the client and third party billing services.

These amendments to N.J.A.C. 11:23-5.3(a)4 and 5.6(b)3 are necessary to clarify that the provisions are only intended to be applicable to the submission of claims to health insurers because the statute and rule referenced in these provisions are not applicable to auto insurers.

A 60-day comment period is provided for this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

Currently, some TPBSs used by providers who treat persons injured in automobile accidents are certified while others are not. Clarifying that the certification requirement applies to all such TPBSs will provide for a more fair and competitive market for the services of such entities.

The Department believes that New Jersey consumers, healthcare providers, and insurers will also be positively affected by clarifying that the safeguards and protections established by the current rules extend to parties who deal with TPBSs that submit PIP claims to automobile insurers. Amending the rules to clearly specify that TPBSs used by providers who treat persons injured in automobile accidents are required to be certified will benefit the providers using such services and the insurers that deal with them by ensuring that such TPBSs are subject to regulatory oversight.

Economic Impact

The Department believes that the proposed amendments may have a negative economic effect on some currently uncertified TPBSs that will be required to become certified based on the proposed amendments. However, the certification process does not involve any fees or require the use of any professional services. Costs of complying with the minimal reporting, compliance, and recordkeeping requirements discussed in the Summary should be minimal. In addition, requiring the certification of all entities that act as TPBSs for providers who treat persons injured in automobile accidents will protect insurers and the public from TPBSs operating without regulatory oversight.

The Department will incur some additional costs associated with processing applications and regulating additional TPBSs. However, the Department's obligations, as well as the other reporting and compliance requirements for TPBSs, are mandated by statute. The Department believes that there may also be a slight negative impact on consumers if the costs related to the certification process are passed through to the consumer. The Department believes that any adverse economic impact will be minimal and is outweighed by the benefits the amendments will

provide to New Jersey consumers and the auto insurers and providers who treat auto accident victims with which uncertified TPBSs currently do business. Certification, and ongoing oversight by the Department, will help assure these parties that, like the TPBSs that deal with health insurers, the entities handling their PIP claims have undergone regulatory scrutiny and possess the financial capacity to fulfill their contractual obligations to those they serve.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments relate to the business of insurance and are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not believe that the proposed amendments will cause any jobs to be generated or lost.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the proposed amendments.

Regulatory Flexibility Analysis

The proposed amendments may apply to “small businesses” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because some currently uncertified TPBSs may employ fewer than 100 full-time employees and therefore are “small businesses.” Reporting and compliance requirements which affect all TPBSs regardless of size can be found

in the rules. See the Summary above for a discussion of the reporting, recordkeeping, and compliance requirements, and see the Economic Impact above for a discussion on the costs of these requirements. The need for professional services is addressed in the Economic Impact.

The proposed amendments provide no different reporting, recordkeeping, or other compliance requirements specifically based on business size. The use of these services as well as various other reporting, recordkeeping, or other compliance requirements is mandated by the Act for businesses without regard to size. Providing different compliance requirements based on business size would, therefore, thwart the intent of the Legislature as expressed in the Act. Therefore, the proposed amendments provide no differentiation in compliance requirements based on business size.

Housing Affordability Impact Analysis

The proposed amendments will not have an impact on housing affordability because the proposed amendments relate to third party administrators.

Smart Growth Development Impact Analysis

The Department believes that there is an extreme unlikelihood that these proposed amendments would evoke a change in housing production in Planning Areas 1 and 2 or with the designated centers under the State Development and Redevelopment Plan in New Jersey because the proposed amendments address third party administrators.

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

11:23-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

“Automobile insurer” means any person or persons, corporation, association, partnership, company, reciprocal exchange, or other legal entity authorized or admitted to transact private passenger automobile insurance in this State, or any one member of a group of affiliated companies that transacts such insurance business in accordance with a common rating system. Automobile insurer does not include an entity that is self-insured pursuant to N.J.S.A. 39:6-52. Automobile insurer shall also mean any insurer issuing a policy of insurance on a motor bus the owner, registered owner, or operator of which is required to maintain medical expense benefit coverage pursuant to N.J.S.A. 17:28-1.6.

“Benefits payer” means an insurer authorized to issue health or dental benefits plans in this State, or any other person who undertakes to provide and assumes financial risk for the payment of health or dental benefits and is obligated to pay claims for health or dental benefits to providers or other claimants. **For the purposes of certification of third party billing services only, “benefits payer” shall also include automobile insurers.**

...

11:23-5.3 Information to be provided to Commissioner

(a) In addition to the information otherwise required by the Act, these rules, or based upon the unique facts of particular cases, by the Commissioner, a third party billing service shall file with the Commissioner:

1. – 3. (No change.)

4. A description of the procedures for prompt submissions of claims **to a benefits payer other than an automobile insurer** pursuant to the provisions of N.J.S.A. 17B:30-23 and N.J.A.C. 11:22-3.

11:23-5.6 Written agreements between third party billing service and client

(a) (No change.)

(b) The agreement shall include:

1. – 2. (No change.)

3. Provisions setting forth the respective liability of the client and the third party billing service for the accuracy and eligibility of submitted claims, and for the prompt submission of claims **to a benefits payer other than an automobile insurer** pursuant to the provisions of N.J.S.A. 17B:30-23 and N.J.A.C. 11:22-3; and

4. (No change.)