

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

New Jersey Workers' Compensation Managed Care Organizations

Proposed Readoption with Amendments: N.J.A.C. 11:6

Proposed Repeal and New Rule: N.J.A.C. 11:6-2.9

Authorized By: Richard J. Balodato, Acting Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8, 17:1-8.1, 17:1-15.e, 34:15-15, and 34:15-88.

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

Proposal Number: PRN 2016-097.

Submit comments by August 19, 2016, to:

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Legislative and Regulatory Affairs
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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt with amendments N.J.A.C. 11:6, New Jersey Workers' Compensation Managed Care Organizations (WCMCOs). Pursuant to N.J.S.A. 52:14B-5.1, the rules set forth in this chapter are scheduled to expire on May 18, 2016. In accordance with N.J.S.A. 52:14B-5.1.c(2), the filing of this notice of proposal to readopt with amendments with the Office of Administrative Law extends the expiration date by 180 days to November 14, 2016.

The Department has reviewed the current rules and has determined that they continue to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The rules, which are found in Subchapter 2, provide a framework for encouraging the use of managed care to furnish injured employees with such medical, surgical, and other treatments and hospital services as may be necessary to cure and relieve the employee of the effects of the injury. The framework further serves to contain medical costs under workers' compensation coverage by providing eligible employers with a method whereby they may select a managed care alternative to traditional workers' compensation medical care at a reduced premium. The rules continue to be necessary to meet these ends.

The chapter, which the Department proposes to readopt, sets forth the following:

N.J.A.C. 11:6-2.1 sets forth the purpose and scope of the subchapter.

N.J.A.C. 11:6-2.2 sets forth the definitions of certain words and terms that appear in the subchapter.

N.J.A.C. 11:6-2.3 sets forth the effect and duration of the approval given to WCMCOs by the Department.

N.J.A.C. 11:6-2.4 sets forth the requirements that a WCMCO must meet.

N.J.A.C. 11:6-2.4(a) sets forth the requirements of an annual report on a form provided by the Department. The Department proposes to amend N.J.A.C. 11:6-2.4(a) as a matter of form to correct the sentence structure of the subsection and to conform to the structure of the other subsections of this subchapter. Further, N.J.A.C. 11:6-2.4(a) is proposed to be amended to include a reference to the Department's website, which contains the WCMCO annual report form and submission requirements. In addition, the address to which the annual report shall be submitted is proposed to be changed to the address for the Office of Consumer Protection Services, to reflect the correct office that receives the annual reports.

N.J.A.C. 11:6-2.4(b) requires that the WCMCO report all changes in operations within 30 days including, but not limited to, contractual changes, name changes, mergers, acquisitions, and sales of the WCMCO and/or the preferred provider organizations serving as the network. The Department is proposing to amend N.J.A.C. 11:6-2.4(b) to clarify the requirement that the WCMCO must report changes to the nature of the WCMCO's operations as reflected in its application and supporting materials filed pursuant to N.J.A.C. 11:6-2.5, as the Department is also proposing the deletion of N.J.A.C. 11:6-2.5(c), as it is duplicative of the requirements of N.J.A.C. 11:6-2.4(b) and is therefore, unnecessary.

N.J.A.C. 11:6-2.4(c) sets forth the criteria that WCMCOs providing medical services to injured employees under a workers' compensation insurance policy must meet.

N.J.A.C. 11:6-2.5 sets forth the procedures for the submission of applications for approval as a WCMCO, as well as the required information and documentation that must accompany the application.

N.J.A.C. 11:6-2.5(a) requires a WCMCO to file its application with the Department. The Department proposes that N.J.A.C. 11:6-2.5(a) be amended to remove the requirement that a WCMCO must send two copies of the written application to the Department, as it is no longer necessary. The address to which the application shall be submitted is proposed to be changed to the address for the Office of Solvency Regulation, to reflect the correct office that receives the application.

N.J.A.C. 11:6-2.5(b) sets forth the information that must be provided in an application for a WCMCO. The Department is proposing to amend N.J.A.C. 11:6-2.5(b) to provide the reference to the Department's website, which contains the WCMCO application and filing instructions. The Department further proposes that N.J.A.C. 11:6-2.5(b)8 be amended to remove the requirement that an actual copy of the certificate of the board certified medical director is required and replace same with the requirement that a WCMCO needs to provide a verification of the medical director's board certification. An actual copy of the certificate is no longer necessary. The Department is also proposing that N.J.A.C. 11:6-2.5(b)14 be amended to clarify that all provider agreements be submitted with a WCMCO's application and that copies of the signature page(s) of provider agreements be available upon request.

The Department is proposing the deletion of N.J.A.C. 11:6-2.5(c), as it is unnecessary. N.J.A.C. 11:6-2.5(c) provides that the Department will retain the documentation referenced in N.J.A.C. 11:6-2.5(b), and requires WCMCOs to report significant changes in the WCMCO's nature of operations as reflected in those materials. These requirements can be found in N.J.A.C.

11:6-2.4(b), and the Department regularly retains documents and records submitted to it in accordance with applicable record retention laws and policies. As such, N.J.A.C. 11:6-2.5(c) is no longer needed.

N.J.A.C. 11:6-2.5(d) sets forth the time for review and approval or denial of applications.

N.J.A.C. 11:6-2.6 sets forth the principles of confidentiality for the data contained in the WCMCO application. The Department proposes that N.J.A.C. 11:6-2.6(a)7 be amended to remove the requirement that an actual copy of the certificate of the board certified medical director is required and replace same with the requirement that a WCMCO needs to provide a verification of the medical director's board certification. An actual copy of the certificate is no longer necessary. This reflects the proposed changes to N.J.A.C. 11:6-2.5(b)8.

N.J.A.C. 11:6-2.7 sets forth the standards for approval and for suspension or revocation of approval of a WCMCO by the Commissioner of Banking and Insurance (Commissioner). This rule also sets forth the process for suspension or revocation of approval by the Commissioner.

N.J.A.C. 11:6-2.8 sets forth requirements for the monitoring and auditing of a WCMCO.

N.J.A.C. 11:6-2.9 sets forth the fee to be submitted to a WCMCO with its application. The Department proposes that N.J.A.C. 11:6-2.9 be repealed and replaced to reduce the application fee from \$3,000 to \$1,500, to reflect the correct fee that the Department charges for WCMCO applications, as referenced on the current form, which is found on the Department's website.

N.J.A.C. 11:6-2.10 sets forth the minimum standards required in a WCMCO provider agreement and the filing requirements for those agreements.

N.J.A.C. 11:6-2.10(a) requires that no provider agreement may be used until a copy of the form of agreement has been filed with the Department. After filing, the form may be used, as long as no disapproval from the Department has been received.

N.J.A.C. 11:6-2.10(b) requires that all forms of agreement and amendments be filed at least 60 days before the planned date of use and contain a unique number in the bottom left-hand corner with which it may be identified.

N.J.A.C. 11:6-2.10(c) requires two copies of amended forms to be filed: one unmarked and one marked showing the changes made between the forms. The Department proposes to amend N.J.A.C. 11:6-2.10(c) as a matter of form to clarify that the submission requirements for amended forms require that the changes to the existing form be shown.

N.J.A.C. 11:6-2.10(d) sets forth the minimum requirements for provider agreements. All agreements must state the terms of the agreement, the services and supplies to be provided, and the benefits for which the provider will be paid by the carrier. The agreement also requires a non-discrimination clause and a hold harmless clause. Lastly, the agreement is required to state that providers shall maintain medical malpractice insurance of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate.

N.J.A.C. 11:6-2.11 sets forth the minimum standards for a fraud detection plan that must be implemented for identifying and reporting instances of possible fraud on the part of injured workers, employers, medical providers, and others.

N.J.A.C. 11:6-2.12 sets forth the minimum WCMCO treatment standards and protocols. The Department is proposing to amend N.J.A.C. 11:6-2.12(a) as a matter of form to clarify that a WCMCO must ensure that workers are able to receive the minimum services specified in the subsection. The Department also proposes that the word “receive” be removed from N.J.A.C.

11:6-2.12(a)1, 2, 3, 5, 6, and 7, as it is redundant and unnecessary. The Department additionally proposes that N.J.A.C. 11:6-2.12(a)7 be amended to remove the word “member” and replace same with “worker,” as the word “member” is not a defined term. The Department is also proposing that N.J.A.C. 11:6-2.12(a)7 be amended as a matter of form to clarify that a worker may be taken to the nearest hospital emergency “department,” rather than emergency “room,” and to remove reference for a fixed site, as it is no longer necessary.

N.J.A.C. 11:6-2.13 sets forth the minimum standards for early return to work programs.

N.J.A.C. 11:6-2.14 sets forth minimum standards for methods of peer review and utilization review.

N.J.A.C. 11:6-2.15 sets forth the financial requirements for WCMCOs.

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

Social Impact

The rules proposed for re Adoption with amendments, a repeal, and a new rule should continue to have a positive effect on New Jersey WCMCOs, employees who receive care through these organizations, and their employers. The existing rules continue to set forth a framework for an alternative method of providing quality care to injured employees, while allowing employers to reduce their costs. The use of WCMCOs allow injured workers to receive prompt, appropriate, and quality medical care for compensable workplace injuries at a lower cost to insurers and employers. The codification of minimum standards for care and quality of WCMCO services will continue to have a direct positive effect on employees by ensuring them prompt, appropriate, and quality medical care. Employers will benefit from the minimum

standards by being assured that their employees receive quality care. The rules relating to financial requirements and fraud prevention plans will continue to help to ensure the financial integrity of the WCMCOs, which will benefit all those affected. The rules proposed for readoption will also continue to allow the Department to fulfill its regulatory duties and enhance its ability to do so by providing clear and comprehensive guidelines.

The proposed amendments, new rule, and repeal generally clarify the existing rules, eliminate information no longer necessary, and reflect current practice, including the correct filing fee and addresses.

Economic Impact

Overall, the rules proposed for readoption with amendments, a repeal, and a new rule should have a favorable economic impact on New Jersey WCMCOs, the employees who receive care through these organizations, and their employers. WCMCOs will continue to be able to offer workers' compensation recipients with services and receive remuneration for those services. Injured employees will continue to receive quality care and their employers will continue to use this lower cost alternative to traditional workers' compensation insurance.

WCMCOs will continue to be economically impacted by the rules proposed for readoption with amendments, a repeal, and a new rule. The WCMCOs will continue to bear the costs to submit annual reports and audited financial reports, including the costs related to the certification of those reports by a certified public accountant (CPA). New WCMCOs will also bear the cost of an application fee, which is proposed to be lowered by the proposed amendments, and all WCMCOs will be responsible for the costs of any necessary financial examinations.

There will continue to be little or no economic effect on employees or their employers beyond the ameliorative effect that utilizing the WCMCO option can have on the cost of workers' compensation coverage as a result of these amendments, new rule, repeal, and existing rules. As stated in the Social Impact above, the proposed amendments, repeal, and new rule clarify the existing rules, eliminate unnecessary information, and reflect current practice. The proposed amendments, repeal, and new rule, therefore, should not impose any negative economic impact. The Department anticipates that the rules proposed for readoption with amendments, a repeal, and a new rule will not affect the monetary level of benefits available to workers.

Accordingly, the benefits to be achieved outweigh any ongoing costs that will continue to be imposed.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with proposed amendments, a repeal, and a new rule are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that the rules proposed for readoption with amendments, a repeal, and a new rule will result in the generation or loss of jobs. The Department invites commenters to submit any data or studies concerning the jobs impact of the rules proposed for readoption with amendments together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the rules proposed for readoption with amendments, a repeal, and a new rule.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is required because some of the WCMCOs may be small businesses as defined in the New Jersey Regulatory Flexibility Act. See N.J.S.A. 52:14B-17. Reporting and compliance requirements, which affect all WCMCOs regardless of size, can be found in the rules proposed for readoption with amendments, a repeal, and a new rule. See the Summary above for a discussion of the reporting and compliance requirements and see the Economic Impact above for a discussion on the costs of these requirements.

The rules proposed for readoption with amendments, a repeal, and a new rule provide no different requirements specifically based on business size. Businesses of all sizes will be required to use professional services for compliance, such as the use of a CPA as discussed in the Economic Impact above. The rules proposed for readoption with amendments, a repeal, and a new rule enforce a regulatory framework to ensure that WCMCOs meet minimum standards, while ensuring their financial viability and stability. This purpose does not provide for different compliance requirements based on business size. Accordingly, the proposed amendments, repeal, new rule, and rules proposed for readoption provide no differentiation in compliance based on business size.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments, a repeal, and a new rule will have an insignificant impact on housing affordability in this State and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules proposed for readoption with amendments concern requirements for WCMCOs.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments, a repeal, and a new rule will not have an impact on smart growth in this State, and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption with amendments, a repeal, and a new rule concern requirements for WCMCOs.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative code at N.J.A.C. 11:6.

Full text of the proposed amendments, new rule, and repeal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 2. NEW JERSEY WORKERS' COMPENSATION MANAGED CARE ORGANIZATIONS

11:6-2.4 Requirements of approved workers' compensation managed care organizations

(a) **The** WCMCO[s] shall [submit] **file** an annual report **with the Department of Banking and Insurance** by April 30th of each year [to the Department of Banking and Insurance] on a

form provided by the Department, **which can be found on the Department's website:**
http://www.state.nj.us/dobi/division_insurance/managedcare/wcmco_annualrpt2014.pdf,

and which shall include income, expenses, gains or losses, number of new cases received since the prior report, number of claims submitted since the prior report, total provider charges, and total sums paid to providers. The annual report shall be submitted to the following address:

New Jersey Department of Banking and Insurance

Office of [Life and Health Insurance] **Consumer Protection Services**

Attn: Workers' Compensation MCO Annual Report

20 West State Street[, 11th Floor]

PO Box [325] **329**

Trenton, NJ 08625-[0325]**0329**

(b) The WCMCO shall report all changes in operations to the Department within 30 days of said change(s), including, but not limited to, contractual changes, name changes, mergers, acquisitions, sales of the WCMCO and/or the preferred provider organizations serving as the network or any changes **to the nature of the WCMCO's operations as reflected in its application and supporting materials filed pursuant to N.J.A.C. 11:6-2.5** at the address shown in (a) above.

(c) (No change.)

11:6-2.5 Workers' compensation managed care organization approval procedures

(a) [For purposes of obtaining the Commissioner's approval under this subchapter, a WCMCO shall submit two copies of a written application to the Department of Banking and

Insurance] **The WCMCO shall file an application for approval with the Department** at the following address:

New Jersey Department of Banking and Insurance

[Insurance Division/Office of Life and Health] **Office of Solvency Regulation**

Attn: WCMCO

20 West State Street[—11th Floor]

PO Box 325

Trenton, NJ 08625-0325

(b) **The WCMCO application form and filing instructions can be found on the Department's website:**

http://www.state.nj.us/dobi/division_insurance/managedcare/mcapps.htm. The WCMCO

application shall include the following:

1.–7. (No change.)

[8. A copy of the certificate of the board certified medical director;]

8. Verification of the medical director's board certification;

9.–13. (No change.)

14. Specimen copies of **all** provider [contracts(s), agreement(s) or other documents of a similar nature] **agreements** between the WCMCO or its subcontractors and each participating medical service provider [or health care provider representative or subcontractor]. Copies of executed signature page(s) of such [contract, agreement or other document for each] provider **agreements** shall be sent only upon request. All provider agreements or amendments shall comply with the provisions or N.J.A.C. 11:6-2.10;

15.–27. (No change.)

[(c) The materials specified in (b) above shall be retained by the Department. Any significant changes to the nature of the WCMCO's operations as reflected in these materials or changes to any items in (b) above, either during or after the approval process, shall be reported to the Department within 30 days.]

[(d)] (c) (No change to text.)

11:6-2.6 Confidentiality of WCMCO application

(a) All data or information contained in a WCMCO's application for approval as set forth in N.J.A.C. 11:6-2.5(b) is confidential, not subject to disclosure under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and will not be disclosed by the Department to any person other than their employees and representatives, except the following items:

1.-6. (No change.)

[7. The certificate of WCMCO's board certified medical director.]

7. Verification of the medical director's Board Certification.

11:6-2.9 Filing and review fees

[Every WCMCO filing for approval of its managed care program under the procedures set forth in N.J.A.C. 11:6-2.5 shall pay a one-time non-refundable application fee of \$3,000 payable to the "Department of Banking and Insurance." The fee shall be included with the application.] **A non-refundable application fee in the amount of \$1,500, payable to the "Treasurer, State of New Jersey," shall be submitted with the application.**

11:6-2.10 WCMCO provider agreements

(a) – (b) (No change.)

(c) Submission of amended forms of agreements shall include two copies of the amended agreement(s) or page(s) [only, if practicable]. One copy shall be marked to show changes [from the prior] **to the existing** form, and one copy shall be unmarked.

(d) (No change.)

11:6-2.12 Minimal WCMCO treatment standards and protocols

(a) The [number of providers utilized by a WCMCO should be adequate to] **WCMCO shall** ensure that workers [of employers] covered by the WCMCO are able to receive, at a minimum, the following services:

1. [Receive initial] **Initial** treatment by a participating physician within 72 hours (depending on the nature of the injury or illness) of the WCMCO's knowledge of the necessity or request for treatment;

2. [Receive initial] **Initial** treatment by a participating physician in the WCMCO within five working days or as soon thereafter as practicable, following treatment by a physician outside the WCMCO;

3. [Receive screening] **Screening** and treatment, if necessary, by [an] **a** WCMCO physician in cases requiring in-patient hospitalization;

4. (No change.)

5. [Receive treatment] **Treatment** by a non-WCMCO medical service provider at the direction of the care coordinator physician when the worker resides outside the WCMCO's geographical service area. The care coordinator physician may only select a non-WCMCO

provider who practices closer to the worker's residence than [an] a WCMCO provider of the same category if that non-WCMCO provider agrees to the terms and conditions of the WCMCO;

6. [Receive specialized] **Specialized** medical services the WCMCO is not otherwise able to provide. The WCMCO's application shall include a description of the places and protocol of providing such specialized medical services; and

7. [Receive emergency] **Emergency** treatment in accordance with procedures that provide that in a potentially life threatening condition, the 911 emergency response system should be called or the [member] **worker** should be taken to the nearest hospital emergency [room] **department**. [For fixed work sites, an WCMCO may instead submit alternative emergency treatment procedures that provide equivalent promptness of treatment and level of care.]