

**INSURANCE**

**DEPARTMENT OF BANKING AND INSURANCE**

**DIVISION OF INSURANCE**

**Dental Services**

**Dental Plan Organizations**

**Expense Limitation**

**Proposed Amendment: N.J.A.C. 11:10-1.9**

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

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, 17:48C-18.1 et seq., 17:48D-1 et seq., 17B:26-44.4 et seq., and 17B:27-51.10a et seq.

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

Proposal Number: PRN 2017-090.

Submit comments by August 4, 2017, to:

Denise Illes, Chief

Legislative and Regulatory Affairs

New Jersey Department of Banking and Insurance

20 West State Street

PO Box 325

Trenton, NJ 08625-0325

Fax: (609) 292-0896

E-mail: [Legsregs@dobi.nj.gov](mailto:Legsregs@dobi.nj.gov)

The agency proposal follows:

**Summary**

Dental Plan Organizations (DPOs) are subject to expense limitations specified in N.J.S.A. 17:48D-14 and N.J.A.C. 11:10-1.9. However, the Federal Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act, Public Law 111-152 (collectively, Federal law) established requirements that health insurers, including DPOs, must follow, such as the imposition of new Federal fees and taxes that were not anticipated when the current expense limitation rules in N.J.A.C. 11:10-1.9 (current rules) were promulgated.

On September 15, 2015, the Department of Banking and Insurance (Department) issued Bulletin No. 15-06, which described how these new fees and taxes created under Federal law apply to expense limitations specified in N.J.S.A. 17:48D-14 and the current rules. Consistent with this Bulletin, the Department proposes to amend N.J.A.C. 11:10-1.9 to specifically exclude these new Federal fees and taxes from the calculation of premiums for purposes of determining the expense limitation. The proposed amendment will specify how these Federal fees and taxes imposed by Federal law apply to the determination of the applicable expense limitation as specified in N.J.S.A. 17:48D-14 and the current rules. Further, the exclusion of the new Federal fees and taxes is intended to maintain the status quo in determining expense limitations.

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, this notice is excepted from the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

### **Social Impact**

The proposed amendment is expected to have a favorable social impact by eliminating any confusion as to how the new Federal fees and taxes apply to the determination of expense limitations as specified in N.J.S.A. 17:48D-14 and the current rules. Further, the proposed

amendment maintains the status quo in how DPOs calculate the premium in order to determine the expense limitation while providing for more money to be available to pay consumer claims. A failure to so amend the rules could be disruptive to DPOs, since the new taxes and fees would leave a smaller portion of the premium to pay consumer claims.

### **Economic Impact**

The Department does not expect that the proposed amendment will have a significant economic impact. The proposed amendment does not create new fees or taxes, but only specifies how the new Federal fees and taxes under Federal law apply to the premium calculation for the purpose of determining the expense limitation. Subtracting the fees and taxes from the premium in calculating expense limitations maintains the economic status quo for DPOs. Further, no additional professional services, such as accounting or actuarial services, will be required in order to comply with the proposed amendment, as DPOs either already contract for or employ such services in-house. Additionally, as stated in the Social Impact above, the proposed amendment will provide for more money to be available to cover claims. Accordingly, the benefits to be achieved through the proposed amendment should outweigh any costs that may be imposed.

### **Federal Standards Statement**

A Federal standards analysis is not required because the requirements contained in the proposed amendment are the same as those imposed by Federal law at P.L. 111-148.

### **Jobs Impact**

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed amendment.

### **Agriculture Industry Impact**

The Department does not expect that the proposed amendment will have any impact upon the agriculture industry in this State.

### **Regulatory Flexibility Statement**

The proposed amendment may apply to small businesses as some of the DPOs presently authorized to operate in New Jersey may employ fewer than 100 full-time employees and therefore, may be small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the proposed amendment does not impose any additional reporting, recordkeeping, or other compliance requirements on DPOs. The proposed amendment does not create new fees or taxes, but rather specifies that the new fees and taxes under Federal law should be excluded from the calculation of premium for purposes of determining the expense limitation as specified in N.J.S.A. 17:48D-14 and the current rules. The Department does not believe that the proposed amendment will require DPOs to obtain additional professional services in order to comply with the proposed amendment. Any professional services that a DPO might need to engage in order to comply with the proposed amendment are of such a nature that such services should already be available to the DPOs as a matter of their daily operations. Additionally, the proposed amendment will alleviate confusion as to how to apply the Federal fees and taxes while calculating premiums in order to determine the expense limitation.

### **Housing Affordability Impact Analysis**

The proposed amendment will have no impact on the affordability of housing in New Jersey, and there is no likelihood that the proposed amendment would evoke a change in the average costs associated with housing because the proposed amendment merely concerns clarifying expense limitations specified in N.J.S.A. 17:48D-14 and the current rules with the requirements imposed by Federal law.

### **Smart Growth Development Impact Analysis**

The proposed amendment will have no impact on smart growth, and there is no likelihood that the proposed amendment would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under State Development and Redevelopment Plan in New Jersey because the proposed amendment merely concerns clarifying expense limitations specified in N.J.S.A. 17:48D-14 and the current rules with the requirements imposed by Federal law.

**Full text** of the proposal follows (addition indicated in boldface **thus**):

#### SUBCHAPTER 1. DENTAL PLAN ORGANIZATIONS

11:10-1.9 Expense limitation

(a) – (e) (No change.)

(f) **For purposes of determining the expense limitation pursuant to N.J.S.A. 17:48D-14, Federal fees, taxes, and/or assessments that are required by the Federal Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act, Public Law 111-152 are excluded from the calculation of premiums.**

