

facility] **shall arrange a transferring patient's transportation** to the [other] **receiving hospital**.

[5.] **2.** If the transfer coordinators do not [agree on] **concur as to the proposed transfer**, [the matter] **each coordinator** shall [be referred] **refer the transfer request** to the CEOs of the respective [institution] **hospitals** for resolution.

[6.] **3.** If the CEOs do not [agree] **obtain a resolution**, the case shall be referred for resolution to the [Division's Assistant Directors in the Office of State Hospital Management] **Division Medical Director**, who [may], in making [their] **a decision on the proposed transfer**, may request clinical and technical input from hospital central office staff.

4. [Resolution, in] **In** instances of continuing disagreement, [rests with] the [Division's] Assistant Commissioner [or the Assistant Commissioner's designee] **of the Division shall resolve the disagreement**.

Recodify existing 7.-8. as **5.-6.** (No change in text.)

(f) [The] **A facility shall adhere to the** following procedures [shall be followed] in [cases of] **conducting an emergency transfer[s] of a patient:**

1. [Emergency shall be defined, for] **For** the purposes of this subchapter, [as] **the term, "emergency," means that a patient poses imminent danger of serious bodily harm to self or others, as evidenced by a recent incident or a change in the patient's psychiatric status, which [less restrictive]:**

i. An available treatment alternative[s other] that is less restrictive than transfer cannot adequately address; [and which requires]

ii. Requires removal of the patient from the patient's current setting [Only the]; **and**

iii. The factors [in] at N.J.A.C. [10:36]8:135-3.3(a)4 or 8 [may] shall serve as the exclusive basis for an emergency transfer.

2.-4. (No change.)

5. If, after transfer, the CEO of the receiving hospital objects to an emergency transfer, [he or she] **that CEO** shall review the case with the CEO of the sending hospital.

6. If [agreement] the CEOs cannot [be reached] **obtain a resolution**, the matter shall be referred to the [Division's Assistant] **Division Medical Director** [in the Office of State Hospital Management for resolution. Resolution] **who, in reviewing the transfer, may request clinical and technical input from hospital central office staff.**

7. In instances of continuing disagreement, [rests with] the [Division's] Assistant Commissioner [or the Assistant Commissioner's designee] **of the Division shall resolve the disagreement**.

[6.] **8.** (No change in text.)

[10:36]8:135-3.5 Procedures when a patient[s object] **objects to transfer**

(a) [Regarding non-emergency transfers, the] **The** following **procedure** [apply]:

1. If] **applies when a treatment team proposes a non-emergency transfer to which a patient and/or the patient's representatives object[s to such a transfer, he or she]:**

1. The treatment team shall [be provided] **provide the patient and/or the patient's representatives** an opportunity to state the basis for [his or her] **the** objection, and present any relevant facts, including statements by other individuals, with or through a representative if so desired, before an individual who is not a member of the treatment team [seeking] **that is recommending the transfer.**

2. The [hospital's Clinical Director/Medical Director] **clinical director or medical director of the hospital** shall designate [this] **the** individual who **is to review the objection, who** may be a member of the [office of the hospital's] clinical [director] **director's staff** or [other] **another** hospital staff member **who is** capable of providing an independent review of the [need for the] proposed transfer.

[2.] **3.** (No change in text.)

[3.] **4.** Patients and their representatives may submit, in writing, their views regarding a non-emergency transfer prior to its implementation.

i. Upon request [by], or **with the** consent, of the patient, the patient and [his or her] **the patient's** representatives may request an opportunity to discuss the proposed[,] non-emergency transfer with a Division representative prior to implementation of the transfer.

(b) Regarding emergency transfers, the following apply:

1. In an emergency as defined at N.J.A.C. [10:36]8:135-3.4[(e)1](f)1, a patient may be transferred in accordance with procedures outlined at N.J.A.C. [10:36]8:135-3.4[(e)](f).

2. If a patient [or a] **and/or the patient's** representative [of the patient] object[s] to [such a] **the** transfer, they may submit their position, in writing, to the Division after implementation of the transfer. A designee of the Division's Assistant Commissioner shall review the basis for the transfer after the transfer[,] and shall provide the patient [or his or her] **and/or the patient's** representatives [with] an opportunity to state the basis for their objection and present any relevant facts or statements. The designee shall not be a member of the patient's treatment team at either the sending or receiving hospital and shall [provide]:

i. Conduct an independent review of the [need] **basis** for the transfer [after the transfer. The designee shall have the];

ii. Have authority to approve or disapprove the transfer[. This decision shall be in writing and]; **and**

iii. Issue a written decision approving or disapproving the transfer that shall [become] be made part of the patient's clinical record.

INSURANCE

(a)

DEPARTMENT OF BANKING AND INSURANCE DIVISION OF INSURANCE

Health Benefit Plans; Health Maintenance

Organizations; and Health Care Quality Act

Application to Insurance Companies, Health

Service Corporations, Hospital Service

Corporations, and Medical Service Corporations

Proposed Amendments: N.J.A.C. 11:24-1.2 and 11:24A-1.2

Proposed New Rules: N.J.A.C. 11:22-5.9A, 11:24-5A, and 11:24A-2A

Authorized By: Marlene Caride, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, 26:2J-1 et seq., 26:2S-1 et seq., and 26:2SS-1 et seq.

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

Proposal Number: PRN 2023-035.

Submit comments by June 30, 2023, to:

Denise Illes, Chief
Office of Regulatory Affairs
New Jersey Department of Banking and Insurance
20 West State Street
PO Box 325
Trenton, NJ 08625-0325
Fax: 609-292-0896
Email: legsregs@dobi.nj.gov

The agency proposal follows:

Summary

On January 13, 2022, the Freedom of Reproductive Choice Act, P.L. 2021, c. 375 (Act), was enacted that codifies the fundamental constitutional right to freedom of reproductive choice, including the right to access contraception, to terminate a pregnancy, and to carry a pregnancy to term.

The Act provides, among other things, that after concluding a study and issuing a report to the Governor and the Legislature demonstrating the necessity of such a rule, the Department of Banking and Insurance (Department) may adopt rules providing that health benefit plans delivered, issued, executed, or renewed in New Jersey, require coverage for abortion. The Act also provides that if the Department adopts a rule establishing this coverage requirement, the Department is required to

mandate that carriers grant, upon request of a religious employer, an exclusion under the contract for the required coverage, if the coverage conflicts with the religious employer's *bona fide* religious beliefs and practices.

On November 23, 2022, the Department concluded a study and issued a report to the Governor and Legislature demonstrating the need for a regulation to provide that health benefit plans delivered, issued, executed, or renewed in this State, provide comprehensive coverage for abortion. Specifically, with respect to health benefits plans regulated by the Department, the study concludes there is a need for a rule to ensure coverage for abortion services, without exceptions. The report identifies the reasons such a rule is necessary, including the need for greater transparency, consistency with the Medicaid market, the *de minimis* cost of such coverage, and the role coverage plays in creating better social and medical outcomes.

The Department is proposing the following amendments and new rules to comply with the requirements in the Act:

The Department proposes new N.J.A.C. 11:22-5.9A, Benefits for termination of pregnancy, to require that all health benefits plans and stand-alone prescription drug plans provide prescription drug benefits for abortion services, consistent with N.J.S.A. 26:2S-39 and N.J.A.C. 11:22-5.9.

The Department proposes to add the definition of "religious employer," consistent with the Act, codified at N.J.S.A. 26:2S-39.b, at N.J.A.C. 11:24-1.2 and 11:24A-1.2.

The Department proposes new N.J.A.C. 11:24-5A and 11:24A-2A, Coverage for Abortion Services.

Proposed new N.J.A.C. 11:24-5A.1 and 11:24A-2A.1 will provide the scope and purpose of the subchapters.

Proposed new N.J.A.C. 11:24A-5A.2 and 11:24A-2A.2 set forth that, except in the case of a religious employer, carriers shall provide coverage, without limit or exclusion, for abortion services. An HMO or carrier may apply cost sharing, including deductible, copayment, or coinsurance, as applicable, to such services provided such cost sharing is also applied to similar services or coverages under the policy.

Proposed new N.J.A.C. 11:24-5A.3 and 11:24A-2A.3 set forth the rules concerning the religious employer exclusion. Proposed new N.J.A.C. 11:24-5A.3(a) and 11:24A-2A.3(a) provide that a religious employer may request, and the HMO or carrier shall grant, an exclusion for abortion coverage, if the abortion coverage conflicts with the religious employer's *bona fide* religious beliefs and practices. It further provides that if an exclusion is granted, the HMO or carrier is not permitted to exclude coverage for care that is necessary to preserve the life or health of a covered person or member or that is the result of an act of rape or incest. Proposed new N.J.A.C. 11:24-5A.3(b) and 11:24A-2A.3(b) also provide that an HMO or carrier that issues a policy or contract containing a religious employer exclusion shall provide written notice of such exclusion to each prospective insured or covered person. Such notice must be provided in the certificate or evidence of coverage, the covered person or member's application or enrollment form, and all sales and marketing materials. Proposed new N.J.A.C. 11:24-5A.3(c) and 11:24A-2A.3(c) additionally provide that for each religious employer request that an HMO or carrier grants, the HMO or carrier shall make an informational filing with the Department, including a form of the written notice provided to prospective insureds.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Department anticipates that compliance with the Act and the proposed amendments and new rules will have a positive social impact for consumers to exercise their fundamental constitutional right to reproductive choice by providing health care coverage for those services, while recognizing the rights of certain religious employers to request an exclusion from such coverage. Consistent with the legislative findings in the Act, the Department finds that the ability to choose whether and when to have children allows people to more effectively plan in a way that is compatible with the person's overall life goals. The Legislature rightly noted that self-determination in reproductive choice is key to helping

establish equality among the genders, and to allow all people of childbearing age to participate equally in the economic and social life of the United States and the State of New Jersey.

The Act and the implementing proposed amendments and new rules enable, facilitate, support, and safeguard the ability of individuals to access affordable and timely reproductive health care services.

Economic Impact

As part of its study pursuant to the Act, the Department requested specific information and conducted an analysis of available data on the cost and possible impacts to insurance coverage if coverage for abortion were required in the regulated markets. Carriers in the individual and small employer markets in New Jersey were asked to provide the impact of covering all abortions as part of their 2023 rate filings. Carriers estimated a range of zero impact to .1 percent of premium. Based on the responses provided, the Department finds that the costs of administering an abortion coverage requirement, pursuant to the Act, to be *de minimis*. Thus, enacting an abortion coverage requirement would not be expected to materially impact insurance rates in the regulated markets. The Department also recognizes that any costs associated with abortion coverage would be offset, to an unspecified degree, by savings achieved as a result of the abortions, such as the costs associated with prenatal care, delivery, or postnatal care. Finally, whether health insurance covers abortion has direct financial implications for patients, particularly those with lower incomes.

The proposed amendments and new rules will require HMOs and carriers to provide notice to prospective insureds or covered persons for those policies or contracts containing a religious employer exclusion, as well as the required informational filing with the Department. The professional services required to comply with the proposed new rules and amendments will be administrative. HMOs and carriers should either currently possess the required professional service in-house or contract for such services. The Department notes that, as set forth above, the requirements are imposed by the Act. Implementation of the Act furthers the intent of the Legislature and the State to enable, facilitate, support, and safeguard the provision of high-quality, comprehensive reproductive care. Accordingly, the benefits to be achieved far outweigh any additional costs that may be imposed.

Federal Standards Statement

A Federal standards analysis is not required. As discussed in the Summary above, the proposed amendments and new rules reflect newly enacted State law and are not subject to any Federal statutes, requirements, or standards.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed amendments and new rules, as they address abortion services coverage in the individual, small employer, and large employer health markets in the State.

Agriculture Industry Impact

The proposed amendments and new rules will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed amendments and new rules will impose reporting and other compliance requirements on "small businesses," as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that the proposed new rules and amendments apply to small businesses, they will apply to HMOs and carriers subject to the Act. The costs and professional services required to comply with the proposed amendments and new rules are set forth in the Economic Impact above. The proposed amendments and new rules provide no differentiation in compliance requirements based on business size. As set forth above, the purpose of the proposed amendments and new rules is to reflect the requirements in the Act with respect to coverage for abortion. The Act and the benefits sets forth therein do not vary based on business size.

Housing Affordability Impact Analysis

The proposed amendments and new rules will not have an impact on housing affordability nor will they evoke a change in the average costs

associated with housing. The proposed amendments and new rules relate to health care coverage for abortion services.

Smart Growth Development Impact Analysis

The Department believes that there is an extreme unlikelihood that these proposed amendments and new 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, in that the proposed amendments and new rules affect the health care coverage of abortion services.

Race and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in this State. Accordingly, no further analysis is required.

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

CHAPTER 22 HEALTH BENEFIT PLANS

SUBCHAPTER 5. MINIMUM STANDARDS FOR HEALTH BENEFIT PLANS, PRESCRIPTION DRUG PLANS, AND DENTAL PLANS

11:22-5.9A Benefits for termination of pregnancy

A health benefit plan or stand-alone prescription drug plan must provide prescription drug benefits for the termination of pregnancy consistent with N.J.S.A. 26:2S-39 and N.J.A.C. 11:22-5.9.

CHAPTER 24 HEALTH MAINTENANCE ORGANIZATIONS

SUBCHAPTER 1. SCOPE AND DEFINITIONS

11:24-1.2 Definitions

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

...
“Religious employer” means an organization that is organized and operates as a nonprofit entity and is referred to at section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986 (26 U.S.C. § 6033).
 ...

SUBCHAPTER 5A. COVERAGE FOR TERMINATION OF PREGNANCY

11:24-5A.1 Scope and purpose

(a) The purpose of this subchapter is to implement N.J.S.A. 26:2S-39, and having concluded a study and issued a report to the Governor and Legislature demonstrating that such a rule is necessary, provide that health benefit plans delivered, issued, executed, or renewed in this State provide coverage for medical and surgical abortion consistent with this subchapter.

(b) This subchapter shall apply to all policies and contracts providing hospital or medical services or benefits that are delivered, issued, executed, or renewed in this State in the individual, small group, and large group markets and all health maintenance organization contracts issued pursuant to N.J.S.A. 26:2J-1 et seq.

(c) This subchapter shall not apply to any policy or contract which, pursuant to a contract between a carrier and the New Jersey Department of Human Services, provides benefits to persons who are eligible for medical assistance pursuant to P.L. 1968, c. 413 (N.J.S.A. 30:4D-1 et seq.); the Children’s Health Care Coverage Program pursuant to P.L. 1997, c. 272 (N.J.S.A. 30:4I-1 et seq.); the FamilyCare Health Coverage Program pursuant to P.L. 2000, c. 71 (N.J.S.A. 30:4J-1 et seq.); or any other program administered by the Division of Medical Assistance and Health Services in the New Jersey Department of Human Services.

11:24-5A.2 Required benefits

Except in the case of a religious employer that is granted an exclusion, pursuant to N.J.A.C. 11:24-1.2, an HMO shall provide coverage, without limit or exclusion, for medical and surgical abortion in accordance with this subchapter. The HMO may apply cost sharing, including deductible, copayment, or coinsurance, as applicable, to such services provided such cost sharing is also applied to similar services or coverages under the contract.

11:24-5A.3 Religious employer exclusion

(a) A religious employer may request, and the HMO shall grant, an exclusion for medical and surgical abortion coverage if coverage conflicts with the religious employer’s *bona fide* religious beliefs and practices. An exclusion granted pursuant to this section shall not be construed to permit an HMO to exclude coverage for care that is necessary to preserve the life or health of the member, or that is the result of an act of rape or incest.

(b) An HMO that issues a policy or contract containing a religious employer exclusion shall provide written notice of such exclusion to each prospective member or covered person. Such notice shall appear in not less than 10-point type in the certificate or evidence of coverage, the member’s application or enrollment form, and all sales and marketing materials.

(c) For each request that an HMO grants to a religious employer, pursuant to this section, the HMO shall make an informational filing with the Department of Banking and Insurance (Department), including a form of the written notice provided to prospective members pursuant to (b) above. Informational filings, including information that identifies the name of the employer, if such is not stated on the written notice, shall be made by the HMO and shall be submitted to the Department at the following address:

New Jersey Department of Banking and Insurance
 Attention: Life and Health Division
 Religious Employer Exclusion
 20 West State Street
 Trenton, NJ 08625-0325
lifehealth@dobi.nj.gov

CHAPTER 24A HEALTH CARE QUALITY ACT APPLICATION TO INSURANCE COMPANIES, HEALTH SERVICE CORPORATIONS, HOSPITAL SERVICE CORPORATIONS, AND MEDICAL SERVICE CORPORATIONS

SUBCHAPTER 1. GENERAL PROVISIONS

11:24A-1.2 Definitions

For the purposes of this chapter, the words and terms set forth below shall have the following meanings, unless the word or term is further defined within a subchapter of this chapter, or the context clearly indicates otherwise:

...
“Religious employer” means an organization that is organized and operates as a nonprofit entity and is referred to at section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986 (26 U.S.C. § 6033).
 ...

SUBCHAPTER 2A. COVERAGE FOR TERMINATION OF PREGNANCY

11:24A-2A.1 Scope and purpose

(a) The purpose of this subchapter is to implement N.J.S.A. 26:2S-39, and having concluded a study and issued a report to the Governor and Legislature demonstrating that such a regulation is necessary, provide that health benefit plans delivered, issued, executed, or renewed in this State provide coverage for termination of pregnancy, consistent with this subchapter.

(b) This subchapter shall apply to all policies and contracts providing hospital or medical services or benefits that are delivered, issued, executed, or renewed in this State in the individual, small

group, and large group markets as follows: all hospital service corporation contracts issued, pursuant to N.J.S.A. 17:48-1 et seq.; all medical service corporation contracts issued, pursuant to N.J.S.A. 17:48A-1 et seq.; all health service corporation contracts issued, pursuant to N.J.S.A. 17:48E-1 et seq.; and all health insurance policies issued, pursuant to N.J.S.A. 17B:26-1 et seq., 17B:27-26 et seq., 17B:27A-2 et seq., and 17B:27A-17 et seq.

(c) This subchapter shall not apply to any policy or contract that, pursuant to a contract between a carrier and the New Jersey Department of Human Services, provides benefits to persons who are eligible for medical assistance pursuant to P.L. 1968, c. 413 (N.J.S.A. 30:4D-1 et seq.); the Children's Health Care Coverage Program pursuant to P.L. 1997, c. 272 (N.J.S.A. 30:4I-1 et seq.); the FamilyCare Health Coverage Program pursuant to P.L. 2000, c. 71 (N.J.S.A. 30:4J-1 et seq.); or any other program administered by the Division of Medical Assistance and Health Services in the New Jersey Department of Human Services.

11:24A-2A.2 Required benefits

Except in the case of a religious employer that is granted an exclusion, pursuant to N.J.A.C. 11:24A-24.3, a carrier shall provide coverage, without limit or exclusion, for medical and surgical abortion in accordance with this subchapter. A carrier may apply cost sharing, including deductible, copayment, or coinsurance, as applicable, to such services provided such cost sharing is also applied to similar services or coverages under the policy.

11:24A-2A.3 Religious employer exclusion

(a) A religious employer may request, and a carrier shall grant, an exclusion for medical and surgical abortion coverage, if coverage conflicts with the religious employer's *bona fide* religious beliefs and practices. An exclusion granted pursuant to this section shall not be construed to permit a carrier to exclude coverage for care that is necessary to preserve the life or health of the covered person or that is the result of an act of rape or incest.

(b) A carrier that issues a policy or contract containing a religious employer exclusion shall provide written notice of such exclusion to each prospective insured or covered person. Such notice shall appear in not less than 10-point type in the certificate or evidence of coverage, the covered person's application or enrollment form, and all sales and marketing materials.

(c) For each request that a carrier grants to a religious employer, pursuant to this section, the carrier shall make an informational filing with the Department of Banking and Insurance (Department), including a form of the written notice provided to prospective insureds pursuant to (b) above. Informational filings, including information that identifies the name of the employer, if such is not stated on the written notice, shall be made by the carrier and shall be submitted to the Department at the following address:

New Jersey Department of Banking and Insurance
Attention: Life and Health Division
Religious Employer Exclusion
20 West State Street
Trenton, NJ 08625-0325
lifehealth@dobi.nj.gov

TREASURY—GENERAL

(a)

DIVISION OF PENSIONS AND BENEFITS

STATE HOUSE COMMISSION

Judicial Retirement System

Deferred Retirement (P.L. 2021, c. 105, P.L. 2021, c. 329, and P.L. 2022, c. 94)

Proposed Readoption with Amendments: N.J.A.C. 17:10

Authorized By: Judicial Retirement System, Brittany Zulla, Secretary.

Authority: N.J.S.A. 43:6A-29.d.

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

Proposal Number: PRN 2023-031.

Submit comments by June 30, 2023, to:

Danielle Schimmel
Assistant Director
Division of Pensions and Benefits
PO Box 295
Trenton, NJ 08625-0295
DPB.regulations@treas.nj.gov

The agency proposal follows:

Summary

The Division of Pensions and Benefits (Division) is responsible for promulgating and reviewing administrative rules for the Judicial Retirement System (JRS), codified at N.J.A.C. 17:10. The State House Commission (Commission) acts as the Board of Trustees (Board) for the JRS and has the general responsibility for the proper operation of the JRS.

On January 9, 2020, Governor Murphy signed P.L. 2019, c. 287, which permits a member of the JRS to retire and defer receipt of a retirement benefit, if appointed county prosecutor by the Governor at the time of retirement. Thereafter, Governor Murphy signed P.L. 2021, c. 105, which changes the eligibility criteria for the above-mentioned county prosecutors. On December 21, 2021, Governor Murphy signed P.L. 2021, c. 329, which modifies the JRS statutes to permit a judge appointed as Administrative Director of the Courts by the Chief Justice of the Supreme Court to defer retirement. This bill clarified the law to provide deferred retirement to a JRS member who is at least 65 years of age, has the necessary judicial service credit for a full judicial retirement, and has served for 20 years as a judge for any court in New Jersey. Additionally, this bill specifically overrode the JRS mandatory retirement age of 70 and allows for the deferment of the mandatory retirement for the JRS to the first day of the month following the termination of the member's service in the position of county prosecutor or as the Administrative Director of the Courts. On August 5, 2022, Governor Murphy signed P.L. 2022, c. 94, which permits a judge who defers retirement from the JRS to become a county prosecutor or Administrative Director of the Courts, to collect State or county annuities. Therefore, the Division proposes several amendments to comply with the new laws. In addition, the rules at N.J.A.C. 17:10 are due to expire and must be readopted.

N.J.A.C. 17:10 was scheduled to expire on May 17, 2023, pursuant to N.J.S.A. 52:14B-5.1.c. As the Division filed this notice of readoption prior to that date, the expiration date is extended 180 days to November 13, 2023, pursuant to N.J.S.A. 52:14B-5.1.c(2).

Therefore, the Division proposes the following amendments that affect retirements in the JRS.

Subchapter 1. Administration

N.J.A.C. 17:10-1.1, Commission meetings, remains unchanged.

N.J.A.C. 17:10-1.2, Fiscal year, remains unchanged.

N.J.A.C. 17:10-1.3, Officers and committees, remains unchanged.

N.J.A.C. 17:10-1.4, Certifying officer, remains unchanged.

N.J.A.C. 17:10-1.5, Records, remains unchanged.