43 NJR 6(1)
June 6, 2011
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INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF LIFE AND HEALTH

Individual Health Coverage Program

Carriers Informational Rate Filing Requirements; Loss Ratio and Refund Reporting Requirements; Relief from Obligations Imposed by the Individual Health Insurance Reform Act and Withdrawals of Carriers from the Individual Market and Withdrawal of Plan, Plan Option or Deductible/Copayment Option

Readoption: N.J.A.C. 11:20-3A, 6, 7, 11 and 18 and 11:20 Appendix Exhibits E and J.

Proposed: January 18, 2011 at 43 N.J.R. 143(a).

Adopted: May 11, 2011 by Thomas B. Considine, Commissioner, Department of Banking and Insurance.

Filed: May 12, 2011 as R. 2011 d. 167, **without change.**

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17B:27A-2 et seq., and P.L. 2008, c. 38.

Effective Date: May 12, 2011.

Expiration Date: May 12, 2018.

Summary of Public Comments and Agency Responses:

The Department received the following comments from Western Southern Life:

COMMENT: The commenter stated that the Regulatory Flexibility Analysis appearing in the proposed readoption states that the rules proposed for readoption apply to domestic insurers, and questioned whether the rules would not apply to foreign insurers.

RESPONSE: The definition of "carrier" in the Individual Health Coverage Program (IHC) rules at N.J.A.C. 11:20-1.2 means "any entity subject to the insurance laws and regulations of this State, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital or health service corporation, or any other entity providing a plan of health insurance, health benefits or health services. For purposes of this chapter, carriers that are affiliated carriers shall be treated as one carrier." Accordingly, the readopted rules are not limited to only domestic insurers as stated in the Regulatory Flexibility Statement. The Department intends that this response serve as a clarification of that fact. Because the reference to domestic insurers appeared only in the Regulatory Flexibility Analysis, and not in the rule text, no change to the rule on adoption is necessary.

COMMENT: The commenter stated that the definitions of "health benefit plans" and "creditable coverage" do not specifically exclude specified disease products, and questioned whether that product would be required to comply with the requirements of these rules.

RESPONSE: "Specified disease coverage" as defined at N.J.A.C. 11:4-53.2 means "coverage that pays fixed-sum benefits on an indemnity non-expense incurred basis in connection with hospital or medical care for the treatment of a specifically named disease or diseases that are life-threatening in nature." Accordingly, because such coverage is not "health insurance," it did not need to be specifically excluded from the definitions of "health benefit plans" or "creditable coverage" appearing in the IHC rules, and it is not required to comply with these rules.

Federal Standards Statement

The readopted rules comply with the Federal Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, and do not expand the requirements set forth in Federal law.

The readopted rules comply with the following Federal laws: Section 1862(b) of the Social Security Act (Medicare as Secondary Payor), 42 U.S.C. § 1395(b) (1994) and implementing regulations at 45 CFR Part 411; the Public Health Service Act, 42 U.S.C. §§ 300gg et seq. (incorporating the Federal Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191; the Newborns' and Mother's Health Care Protection Act of 1998, Pub. L. 104-204, 110 Stat. 1935 (1996); the Women's Health and Cancer Rights Act of 1998, Pub. L. 105-277, Title IX, §903, 112 Stat., and implementing regulations at 45 CFR Parts 145 and 146; and the Patient Protection and Affordable Care Act, Public Law 111-148 (PPACA).

The PPACA was enacted on March 23, 2010, and the Health Care and Education Reconciliation Act (Reconciliation Act) (Public Law 111-152) was enacted on March

30, 2010. The Federal Departments of Health and Human Services, Treasury and Labor are issuing regulations to implement the PPACA and the Reconciliation Act. The Federal law includes provisions regarding medical loss ratios in the individual market, including requirements for the payment of rebates to consumers. It is the Department's current understanding that the calculation of medical loss ratios and payment of rebates in accordance with existing New Jersey law does not prevent the application of the Federal law, and no changes to the current rules at N.J.A.C. 11:20-6 or 7 have been included with these readopted rules.

The readopted rules do not expand upon the requirements set forth in these Federal laws. There are no other Federal laws that apply to these rules.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 11:20-3A, 6, 7, 11 and 18 and 11:20 Appendix Exhibits E and J.