

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

Health Maintenance Organizations

Health Care Quality Act Application to Insurance Companies, Health Service

Corporations, Hospital Service Corporations, and Medical Service Corporations

Adopted New Rules: N.J.A.C. 11:24-8.9, 11:24-8 Appendix, 11:24A-5.3, and 11:24A-5

Appendix

Proposed: April 1, 2013, at 45 N.J.R. 720(a).

Adopted: March 31, 2014, by Kenneth E. Kobylowski, Commissioner, Department of Banking and Insurance.

Filed: March 31, 2014, as R.2014 d.071, **with substantial and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1 and 17:1-15.e; and P.L. 2011, c. 190 (codified as N.J.S.A. 26:2S-14.1 et seq.).

Effective Date: May 5, 2014.

Operative Date: August 3, 2014.

Expiration Dates: February 15, 2015, N.J.A.C. 11:24;

March 1, 2018, N.J.A.C. 11:24A.

Summary of Public Comments and Agency Responses:

The Department received comments from the Raritan Bay Medical Center, the Medical Society of New Jersey, and the New Jersey Hospital Association.

COMMENT: One commenter suggested that the Department define “individual plans” on the notice in order to avoid consumer confusion.

RESPONSE: The Department intends that for the purpose of these rules, “individual plans” are those that are consistent with the definition of “individual health benefits plan” in the Individual Health Coverage Act, see N.J.S.A. 17B:27A-2, and rules promulgated thereunder, see N.J.A.C. 11:20-1.2.

COMMENT: One commenter stated that the notice indicates that persons covered under a group health plan should contact the employer for the appeal process. The commenter is concerned that this language may lead to consumer confusion in an attempt to support consumer education. The commenter stated that consumers need to fully understand their health insurance benefits and appeal rights, but the content needs further elucidation. One commenter requested that, since many patients are still not aware whether their healthcare insurance is self-insured, the following phrase (in italics) be added to the notice: Persons covered under a group plan through an employer should contact the employer regarding any appeal process that applies under the employer’s group plan, *as IHCAP may not apply*.

RESPONSE: The Department agrees with the commenters and notes the IHCAP does not apply to certain group plans – for instance, to self-insured plans, which are subject to Federal, not State, regulation. The Department is revising the notice language in the Appendices to N.J.A.C. 11:24-8 and 11:24A-5 upon adoption in order to clarify that the IHCAP does not apply to some group plans and that those group plans may be subject to a different external appeal process. Pursuant to N.J.A.C. 1:30-6.3(f)2, this clarification is considered a change that may be made upon adoption.

COMMENT: One commenter stated that it believes the message will be lost if hospitals are to post the entire content that is posted on the Department's website entitled "An Explanation of an Individual's Right to Appeal Health Insurance Determinations." The commenter encouraged the Department to provide a consistent message for posting as opposed to allowing the providers the discretion to select the content reflected in N.J.A.C. 11:24-8 Appendix. The commenter stated that if it is the intention of the Department that the exact notice text contained in the Appendix be used, that needs to be clear in the first sentence of N.J.A.C. 11:24-8.9(b) because, as written, providers only have to provide information on the appeal process and time limitations.

RESPONSE: The Department's intent in using the phrase "as set forth in the notice ... entitled ..." in N.J.A.C. 11:24-8.9(b) and 11:24A-5.3(b) as proposed was that the exact notice text contained in the appendices be used. In order to make that intent more explicit, upon adoption the Department is revising the rule text at N.J.A.C. 11:24-8.9(b) and 11:24A-5.3(b) to state that "The notice shall ... include the content as set forth in the notice ... incorporated herein by reference as the subchapter Appendix ..." This clarification ensures that all posted notices are consistent, thereby lessening the burden placed on hospitals and providers required to post the notices, and ensuring that the same information is being made available to all members of the public.

COMMENT: Two commenters requested that the Department provide a delayed operative date for the rules in order to allow providers the opportunity to fully implement the new requirement, including producing and posting the notices. One commenter suggested a 60-day delay, while the other commenter suggested 90 days.

RESPONSE: The Department agrees with the commenters, and is providing a 90-day delayed operative date on the adopted new rules specifying the notice requirements.

Federal Standards Statement

A Federal standards analysis is not required because the requirements contained in the adopted new rules are not subject to any Federal standards.

Full text of the adopted new rules follows (additions to proposal indicated in italicized boldface with asterisks **thus**; deletions from proposal indicated in brackets with asterisks **[thus]**):

11:24-8.9 Notice requirement

(a) (No change from proposal.)

(b) The notice shall be in the format and include **the** content **[that describes the appeals process, specifies applicable time limitations, and indicates the types of health benefits plans to which the IHCAP applies]** as set forth in the notice entitled “An Explanation of an Individual’s Right to Appeal Health Insurance Determinations,” incorporated herein by reference as the subchapter Appendix, and also posted on the Department’s website at www.dobi.nj.gov/ihcpappeals/. If posted using multiple pages, each page of the notice shall be at least 8 ½ x 11 inches with print in 12-point type or larger. If displayed as a one-page poster, the poster shall be of sufficient size to depict all of the required text of the notice in print of at least 12-point type.

APPENDIX

**AN EXPLANATION OF AN INDIVIDUAL’S RIGHT TO APPEAL HEALTH
INSURANCE DETERMINATIONS**

...

Independent Health Care Appeals Program (IHCAP)

Appeals that remain unsuccessful after completion of the carrier’s internal appeal process may be sent to the Independent Health Care Appeals Program (IHCAP*[.]*)*. This is called a Stage 3 appeal. The IHCAP applies to health benefits plans offered through Medicaid and in the individual health insurance market. *[Persons]* ***However, persons*** covered under a group plan through an employer ***may be covered under the IHCAP or another external appeal process and*** should contact the employer regarding any appeal process that applies under the employer’s group plan. The IHCAP does not apply to individuals on Medicare.

...

11:24A-5.3 Notice requirement

(a) (No change from proposal.)

(b) The notice shall be in the format and include ***the*** content *[that describes the appeals process, specifies applicable time limitations, and indicates the types of health benefits plans to which the IHCAP applies]* as set forth in the notice entitled “An Explanation of an Individual’s Right to Appeal Health Insurance Determinations,” incorporated herein by reference as the subchapter Appendix, and also posted on the Department’s website at www.dobi.nj.gov/ihcpappeals/. If posted using multiple pages, each page of the notice shall be at least 8 ½ x 11 inches with print in 12-point type or larger. If displayed as a one-page poster,

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