

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

OFFICE OF LIFE AND HEALTH

Maternity Installment Payments

Adopted New Rules: N.J.A.C. 11:22-9

Proposed: January 18, 2011 at 43 N.J.R. 146(a).

Adopted: June 9, 2011 by Thomas B. Considine, Commissioner, Department of Banking and Insurance.

Filed: June 9, 2011 as R. 2011 d. 190, **with substantive and technical changes** not requiring additional public notice and opportunity for comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1, 17:1-14 and 17:1-15(e); and P.L. 2009, c. 113.

Effective Date: July 5, 2011.

Expiration Date: October 23, 2013.

Summary of Public Comments and Agency Responses:

The Department received comments from the New Jersey Association of Health Plans (NJ AHP), the New Jersey Obstetrical & Gynecological Society (NJOGS) and the American Congress of Obstetricians and Gynecologists (ACOG)/New Jersey Section.

COMMENT: Two commenters expressed their support for the Department's proposed rules, and thanked the Department's staff for the hours of discussion and consideration of how best to implement the legislation. One of the commenters especially supported the proposed provisions permitting providers to change their election of reimbursement at any time during the first year, then annually thereafter; the clear definition of the CPT codes to be used for the two billing options; and the requirement that the total installment payments may not be less

than the carrier's global payment. The commenters stated that the rules will assist in a very real way with cash flow issues and offset some of the medical liability insurance concerns.

RESPONSE: The Department thanks the commenters for their support.

COMMENT: One commenter stated that the Regulatory Flexibility Analysis and proposed N.J.A.C. 11:22-9.3(b) stated that providers may elect whether to be reimbursed in installments, and that such election must be made in writing via mail, fax or e-mail. The commenter requested that the Department consider use of web-based provider portals to make elections and confirmations. The commenter noted that all health plans in New Jersey currently use the same provider portal.

RESPONSE: The Department agrees, and is amending N.J.A.C. 11:22-9.3(b) to include web-based provider portals as a means by which providers may elect to be reimbursed in installments.

COMMENT: One commenter stated that proposed subsection (a) of N.J.A.C. 11:22-9.1, Purpose and scope, states that the purpose of the proposed subchapter is to establish a process whereby obstetrical providers may elect to be reimbursed in installments for maternity services rendered during the term of a covered person's pregnancy. The commenter also stated that proposed N.J.A.C. 11:22-9.3(a) states that obstetrical providers may elect to be reimbursed for maternity services rendered on either a global basis or "on an installment basis (more than one payment for services rendered during the term of a covered person's pregnancy)." Finally, the commenter stated that proposed N.J.A.C. 11:22-9.5(a) states that providers electing to be reimbursed on an installment basis will be reimbursed in "at least three equal installment payments during the term of the covered person's pregnancy as follows: 1. Following the 12th week of pregnancy; 2. Following the 28th week of pregnancy; and 3. Following delivery." The commenter indicated that these provisions seem to be inconsistent with the proposed rules'

definition of "maternity services" as "prenatal care (office visits and screening tests), labor and delivery services (including hospitalization) and postpartum/postnatal care (routine hospital and outpatient visits following delivery)" because they do not include postpartum care. The commenter suggested that the Department include postpartum care in these provisions. The commenter explained that it is very important for a carrier's HEDIS (Healthcare Effectiveness Data and Information Set) measurement that it collect data on whether a member received postpartum care although certain providers may not want to wait until after postpartum care is delivered to collect the third installment payment.

RESPONSE: The Department does not believe that any change in the language of the rules' text is necessary. While N.J.A.C. 11:22-9.1(a) states that the purpose of the proposed rules is to establish an installment payment method for maternity services provided "during the term of a covered person's pregnancy," N.J.A.C. 11:22-9.3(a) states that providers may elect to be reimbursed for maternity services "on either a global basis (one payment for all services rendered *during the term of a covered person's pregnancy* for ante partum care, delivery and postpartum care) or on an installment basis (more than one payment for services rendered *during the term of a covered person's pregnancy*)" (emphasis supplied). The global payment explanation clarifies that "during the term of a covered person's pregnancy" includes postpartum care. Further, N.J.A.C. 11:22-9.5(a) states that for installment reimbursement, "*at least* three equal installment payments *during the term of the covered person's pregnancy*" (emphasis supplied) are to be made, with a third payment to be made following delivery. The language in this provision would not preclude carriers from making an additional payment(s) for postpartum care. Additionally, all of the CPT codes listed at N.J.A.C. 11:22-9.5(c) for "a final installment payment following delivery" include postpartum care. These CPT codes could only be appropriately billed after postpartum care had been provided.

COMMENT: One commenter stated that the proposed definition of "obstetrical provider" at N.J.A.C. 11:22-9.2, "an obstetrician/gynecologist licensed by the State Board of Medical Examiners or a midwife licensed by the State Board of Medical Examiners as a certified midwife or a certified nurse midwife," should also include maternal fetal medicine specialists because it is within their scope of practice to perform deliveries.

RESPONSE: The proposed rules' definition of "obstetrical provider" is identical to the statutory definition and cannot be revised. Moreover, maternal fetal medicine physicians or specialists, also called perinatologists, are obstetricians who specialize in providing care for women with normal pregnancies and those with a high risk of problems during their pregnancy. Accordingly, these specialists would be included within the proposed definition of "obstetrical provider."

COMMENT: Proposed N.J.A.C. 11:22-9.3(c) states that "Providers shall be permitted to opt out of their initial election to be reimbursed in installments at any time within the first year following that election and annually thereafter for any given provider taxpayer identification number." Also, proposed N.J.A.C. 11:22-9.3(d) states that "Any such election as described in (b) or (c) above shall be made with respect to all providers billing under the same identification number unless otherwise agreed to by the provider and the carrier." The commenter stated that permitting elections at the individual provider tax identification number (TIN) level for those providers that are part of a group practice would be operationally infeasible since practices are paid at the group level. The commenter recommended that installment payment elections be at the group TIN level unless the provider is a solo practitioner, and requested that references to providers billing under a provider taxpayer identification number be changed to read ". . . billing under the same group tax identification number" to differentiate that all providers in a group need to elect the same payment methodology.

RESPONSE: The Department does not believe that the commenter's suggested language is necessary. As the commenter notes the regulation as proposed says "Any such election ...shall be made with respect to all providers *billing* under the same provider identification number" (emphasis supplied). In a group practice setting, the group identifier would be used for billing in the group practice.

COMMENT: Proposed N.J.A.C. 11:22-9.3(e) states that "In the absence of an installment election, carriers shall reimburse providers billing for services rendered on a global basis based on billings actually received, subject to the carrier's reasonable request for medical records and other documentation necessary to establish the appropriate payment." The commenter stated that many providers will not make an installment election, and because the American Medical Association (AMA) did not create new CPT codes for installment billing, there is a significant opportunity for error and confusion in billing and payment as a result of this law. For accurate billing and payments, if a provider has not made an election, and for transitions in billing from global to installment payments for those who have made an election, the global payment as a default payment model is extremely important. The commenter further stated that it believes it is extremely important to maintain opportunities for audit rights in instances where a provider is billing in either a global or installment basis, and the proposed language allowing a carrier's "reasonable requests for medical and other documentation necessary to establish the appropriate payment" is extremely important to the carriers.

RESPONSE: The Department agrees with the commenter.

COMMENT: Proposed N.J.A.C. 11:22-9.5(d) states that "the total of all installment payments received by an obstetrical provider shall not be less than the amount the provider would have received under the carrier's global payment for routine maternity care." The commenter stated that it understood from the installment payment legislation and dialogue with

the provider community that the goal of the law was to create an installment payment structure that is revenue neutral for both the health plan and the provider. The commenter requested that this provision be amended by replacing "shall not be less than . . ." with "shall be neither less nor more than . . . [.]"

RESPONSE: The Department does not believe the commenter's suggested language change is necessary. The Department proposed the language in question to ensure that providers electing to be reimbursed in installments, pursuant to the legislation granting that right, would not be penalized for doing so. It was not the Department's intent in proposing these rules to establish fees. Whether insurers establish installment payment amounts so that providers are not paid more under the installment method than if they were paid globally is a matter of contracting between the insurer and the provider.

COMMENT: One commenter stated that it supported the proposed rules' operative date of six months after the effective date of the rules. The commenter stated that health plans do not believe they could implement the necessary system changes for proper coding and reimbursements without at least that much time. The commenter also noted that the transition to reimbursing in installments using CPT codes that are traditionally used for a global payment will be complicated and challenging and may create opportunities for errors in the beginning of this transition.

RESPONSE: The Department thanks the commenter for its support.

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal standards or requirements applicable to the adopted new rules.

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

11:22-9.3 General requirements

(a) (No change from proposal.)

(b) Carriers shall permit providers to elect at least annually whether to be reimbursed for maternity services on a global or an installment basis. Such election shall be made in writing and take effect with respect to pregnancies beginning on or after 30 days following receipt of notice by the carrier. Written notice of the provider's election may be effectuated via mail, fax*,* * [or]* e-mail *or web-based provider portal*.

(c) – (e) (No change from proposal.)

11:22-9.4 Global reimbursement

(a) For providers electing to be reimbursed for maternity services on a global basis, carriers shall accept billings under the CPT codes most current to the date of billing for services as published by the AMA for global routine maternity care. The global routine maternity care CPT codes as of *[(the effective date of these rules)]* ***July 5, 2011*** are the following:

1. – 4. (No change from proposal.)

11:22-9.5 Installment reimbursement

(a) (No change from proposal.)

(b) Carriers shall accept billings under the CPT codes most current to the date of billing for services established by the American Medical Association indicating a request for installment payments prior to delivery. The CPT codes as of *[(the effective date of these rules)]* ***July 5, 2011*** are as follows:

1. – 2. (No change from proposal.)

(c) Carriers shall accept billings under the CPT codes most current to the date of billing for services established by the AMA for a final installment payment following delivery. The CPT

codes for such services as of *[(the effective date of these rules)]* ***July 5, 2011*** include the following:

1. – 4. (No change from proposal.)

(d) – (e) (No change from proposal.)

11:22-9.6 Operative date

This subchapter shall apply to pregnancies beginning on or after *[(6 months following the effective date of this subchapter)]* ***January 5, 2012***.