

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

New Jersey Individual Health Coverage Program
Relief from Obligations Imposed by the Individual Health Insurance Reform Act

Proposed Readoption with Amendments: N.J.A.C. 11:20-11

Authorized By: Donald Bryan, Acting Commissioner, Department of Banking and Insurance.

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

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

Proposal Number: PRN 2005-286

Submit comments by October 14, 2005 to:

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The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 11:20-11 was scheduled to expire on August 7, 2003. In the July 7, 2003 New Jersey Register, the Individual Health Coverage Program Board (IHC Board) published a Notice of Extension of Chapter Expiration Date (see 35 N.J.R. 2898(a)). That Notice stated that the Department of Banking and Insurance (Department) and the IHC Board requested an extension of the expiration date to a date 270 days after the New Jersey Supreme Court issued a decision in a matter that had been pending before it relating to another subchapter of the IHC Program rules, N.J.A.C. 11:20-2.17(c) (See *In re Individual*

Health Coverage Program's Readoption of N.J.A.C. 11:20-1.1 et seq.). Readoption of N.J.A.C. 11:20 without benefit of the Supreme Court decision may have generated unnecessary additional litigation, and N.J.A.C. 11:20-2.17(c) as readopted may have conflicted with the Court's decision. Therefore, on May 27, 2003, Governor McGreevey directed that the expiration date for N.J.A.C. 11:20 be extended from August 7, 2003 to a date 270 days after the Supreme Court issued its decision. The Court issued its decision on May 10, 2004, extending the expiration of N.J.A.C. 11:20 to February 4, 2005. See 179 N.J. 570. Pursuant to N.J.S.A. 52:14B-5.1d, by letter of February 3, 2005, Acting Governor Codey again extended the expiration date of these rules until July 4, 2005. See 37 N.J.R. 778(a).

As required by Executive Order No. 66, the Department has reviewed these rules and has determined that they are necessary, reasonable and proper for the purpose for which they were promulgated. The subchapter applies to all members of the IHC Program. Pursuant to N.J.S.A. 52:14B-5.1c, submission of this notice of proposal to the Office of Administrative Law extended the subchapter expiration date to December 31, 2005.

The readoption of N.J.A.C. 11:20-11 is necessary because, as stated in the purpose and scope section at N.J.A.C. 11:20-11.1, this subchapter establishes the informational and procedural requirements for members requesting: (1) a deferment, pursuant to N.J.S.A. 17B:27A-12a(3), from obligations to pay assessments pursuant to N.J.S.A. 17B:27A-12 (including those for IHC Program losses and administrative expenses); or (2) an exception, pursuant to N.J.S.A. 17B:27A-8, from the obligation to offer coverage or accept applications to provide a standard health benefits plan to eligible persons pursuant to N.J.S.A. 17B:27A-8.

N.J.A.C. 11:20-11.2 contains definitions of words and terms used in the subchapter.

N.J.A.C. 11:20-11.3 provides application procedures and filing format for requests for

relief from obligations under the Individual Health Insurance Reform Act, N.J.S.A. 17B:27A-2 through 16.5 ("the Act").

N.J.A.C. 11:20-11.4 sets forth the information to be filed and the application procedures to be used by carriers when applying for allowable relief from obligations, and imposes a \$1,000 filing fee. The Department is proposing a few minor amendments to this section: (1) given that email is a common means of communication today, at N.J.A.C. 11:20-11.4(a)1iv, the Department is requiring that an applicant provide an email address for their contact person in addition to telephone and telefax numbers; (2) to help ensure the accuracy and reliability of the applicant's filing, at N.J.A.C. 11:20-11.4(a)6, requiring that the actuary attesting to the adequacy of reserves be a member of the American Academy of Actuaries; (3) to help ensure that the information being submitted by an applicant will be useful to the Department in evaluating a request, at N.J.A.C. 11:20-11.4(a)9 requiring that an applicant provide copies of all quarterly statements for the 12 months immediately preceding the date of the filing rather than for the period beginning January 1 in the year of the filing to the quarterly statement immediately preceding the date of the filing; (4) and minor grammatical changes at N.J.A.C. 11:20-11.4(b) and (c).

N.J.A.C. 11:20-11.5 provides that all information contained in the request for relief is confidential, except for specified information. The Department is proposing to include at N.J.A.C. 11:20-11.5(a) the common law right to know as a basis for maintaining confidentiality of information submitted.

N.J.A.C. 11:20-11.6 establishes the standards to be utilized by the Commissioner when determining whether or not to grant relief in accordance with the Act.

N.J.A.C. 11:20-11.7 sets forth procedures by which carriers may request a hearing on the

Commissioner's determination. The Department is revising this section to be consistent with amendments being proposed to N.J.A.C. 11:20-20, the IHC Board's rule provision addressing appeals of actions of the Board, published elsewhere in this Register. The amendments include replacing the phrase "material issues in dispute" to "disputed adjudicative facts warranting a hearing" to more accurately describe the conditions under which transmittal to a fact finder is warranted; expanding the time frame within which a member may request a hearing from seven to 20 days; and deleting a reference to the Commissioner deciding a contested case on the papers submitted where there are no good faith issues of material fact in dispute.

N.J.A.C. 11:20-11.8 requires carriers requesting relief to notify the Program of the relief request and of the disposition of such requests by the Commissioner. The Department is proposing minor amendments to this section for clarification purposes.

N.J.A.C. 11:20-11.9 provides notice and filing requirements for a carrier which is a health maintenance organization asserting that it is not required to offer or accept applications pursuant to N.J.S.A. 17B:27A-8a because it lacks the capacity for additional enrollees.

N.J.A.C. 11:20-11.10 states that these rules do not limit or preclude the Commissioner from instituting any other actions pursuant to law regarding a carrier's operations.

N.J.A.C. 11:20-11.11 sets forth penalties for violations of the subchapter.

Readoption of the remaining subchapters in Chapter 20 is proposed separately by the New Jersey Individual Health Coverage Program Board elsewhere in this issue of the New Jersey Register, and completion of the readoption process coordinated between the agencies.

A 60-day comment period is provided for this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

N.J.A.C. 11:20-11 establishes procedures by which a carrier may apply for a deferral of its obligation to pay assessments or a waiver of its obligation to offer coverage and accept applications from eligible persons. The New Jersey Individual Health Coverage Program rules established at N.J.A.C. 11:20 require that all carriers provide individual health benefits plans in accordance with the requirements set forth in the Act. This subchapter, however, permits certain eligible carriers to request relief from paying assessments and/or offering coverage pursuant to the Act, thereby maintaining the financial stability of those carriers and their ability to pay existing claims liabilities. This protects current policyholders and subscribers, and benefits the insurance buying public and carriers generally.

Economic Impact

The proposed readoption of N.J.A.C. 11:20-11 should not result in adverse economic impact upon carriers. These rules implement various provisions of the Act by establishing adequate procedures and informational requirements by which carriers may request relief from certain statutory obligations under the Act, and by which the Commissioner may adequately evaluate such requests to determine whether relief is warranted in a particular case. These rules are intended to aid carriers' administrative, financial and legal staff in initiating and executing applications for relief, as permitted under the Act, thus enabling carriers to avoid any adverse economic impact.

Carriers seeking relief will be required to bear costs of compiling and submitting the required information in the proper format, and pay a \$1,000 filing fee, except that no fee is required if the carrier is in rehabilitation or conservation. The Department does not believe that

any additional adverse impact will be imposed on carriers because the information required to be submitted should be readily available, and because the filing fee is reasonable in consideration of the costs incurred by the Department in reviewing such filings.

To date, the Department has not received any requests for relief pursuant to these rules.

Federal Standards Statement

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

Jobs Impact

The Department does not anticipate that the rules proposed for readoption will result in the generation or loss of jobs.

Agriculture Industry Impact

The Department does not believe that the rules proposed for readoption will have any impact on the agriculture industry in the State.

Regulatory Flexibility Analysis

These rules proposed for readoption apply to all insurers, health service corporations and health maintenance organizations authorized to issue health benefits plans in New Jersey. Some of these entities may be "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These rules do not impose specific reporting and compliance requirements on

carriers generally, but only upon those carriers that choose to request relief from provisions of the Act.

Carriers that are small businesses and wish to avail themselves of these rules are required to bear any costs associated with compiling and filing information as required by the rules, including the required filing fee. To the extent that these rules apply to small businesses, they may impose a greater impact in that small businesses may be required to devote proportionately more staff and financial resources to achieve compliance. The Department believes, however, that any additional costs would not pose an undue burden in that the information required is readily available and the filing fee is reasonable considering the cost that would be incurred by the Department in reviewing such filings.

The Act provides no different compliance requirements based on business size. As noted previously, these rules set forth informational requirements and procedures by which carriers may request relief from the obligation to pay assessments or to issue coverage to "eligible persons" pursuant to the Act. Accordingly, and to ensure consistency and uniformity in the review of requests for relief, these repropoed rules provide no differentiation in compliance requirements based on business size.

Smart Growth Impact Statement

The rules proposed for readoption have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:20-11.

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

11:20-11.4 Informational filing requirements

(a) When requesting relief from obligations imposed pursuant to N.J.S.A. 17B:27A-4 or 17B:27A-12, the applicant shall provide with its request the following information in a clear, concise and complete manner:

1. A cover letter stating:

i. - iii. (No change.)

iv. The name, title, telephone number, [and] telefax number **and email address** of a contact person familiar with the filing to whom the Department may direct any additional questions;

2. - 5. (No change.)

6. An actuarial opinion, **signed by an actuary who is a member of the American Academy of Actuaries,** attesting to the adequacy of reserves specifically for all accident and health lines of business, and for all lines of business which the applicant transacts, in the format of and satisfying all requirements for the actuarial opinion and memorandum required to be submitted as a part of the annual statement filed by the applicant;

i. (No change.)

7. - 8. (No change.)

9. Copies of all quarterly statements for [the period beginning January 1 in the year of the filing to the quarterly statement] **the 12 months** immediately preceding the date

of the filing;

10. - 13. (No change.)

(b) An applicant asserting that the Department's review of its request **should** be evaluated on a particular basis (that is, pre-pooled, post-pooled, consolidated or unconsolidated), shall submit a written statement which sets forth the specific reasons, with supporting documentation, if any, for which it believes evaluation on a particular basis is appropriate to that applicant, and the specific reasons, with supporting documentation, if any, for which evaluation on other bases would be inappropriate.

(c) All filings shall be accompanied by the following certification signed by the chief financial officer of the applicant: "I, _____, certify that the attached filing complies with all requirements set forth in N.J.A.C. 11:20- 11 and that all of the information it contains is true and accurate. I further certify that I am authorized to execute this certification on behalf of the applicant."

11:20-11.5 Confidentiality of request for relief

(a) All data or information contained in the request for relief filed pursuant to this subchapter shall be confidential and shall not be subject to public disclosure or copying pursuant to the "Right to Know" law, N.J.S.A. 47:1A-1 et seq., **or the common law right to know,** except for the following items, but only upon written, specified request and following 10 days written notice by the Department to the member/applicant:

1. - 7. (No change.)

11:20-11.7 Hearings

(a) [If the Commissioner denies a member's request for relief made pursuant to this subchapter, or if the member objects to the terms of the relief granted, the] A member may request a hearing on [the Commissioner's] a determination by the Commissioner within [seven] 20 days from the date of receipt of such determination as expressly permitted by the chapter as follows:

1. A request for a hearing shall be in writing and shall include:

i. The name, address, [and] daytime telephone number, fax number and e-mail address of a contact person familiar with the matter;

ii. - iii. (No change.);

iv. A concise statement listing the [material facts in dispute] disputed adjudicative facts warranting a hearing and describing the basis for [which] the member's [believes] contention that the Commissioner's findings of fact are erroneous.

2. The Commissioner may, after receipt of a properly completed request for a hearing, provide for an informal conference between the member and such personnel of the Department as the Commissioner may direct, to determine whether there are [material issues of fact in dispute] disputed adjudicative facts.

3. The Commissioner shall, within 30 days of a properly completed request for a hearing, determine whether the matter constitutes a contested case, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

i. If the Commissioner finds that the matter constitutes a contested case, the Commissioner shall transmit the matter to the Office of Administrative Law for a hearing consistent with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the

Uniform Administrative Procedure Rules, N.J.A.C. 1:1. [When the matter is determined to be a contested case, if the Commissioner finds that there are no good-faith disputed issues of material facts and the matter may be decided on the documents filed, the Commissioner may notify the applicant in writing as to the final disposition of the matter.]

ii. If the Commissioner finds that the matter does not constitute a contested case, the Commissioner, with the approval of the Director of the Office of Administrative Law, may transmit the matter to the Office of Administrative Law for a hearing consistent with N.J.A.C. 1:1-21.

iii. If the Commissioner finds that there are no good-faith disputed [issues of material] **adjudicative** facts and the matter may be decided on the documents filed, the Commissioner may notify the applicant in writing as to the final disposition of the matter.

11:20-11.8 Notice [of] **to** the IHC Program

Members requesting relief pursuant to this subchapter shall concurrently provide written notice of all such requests to the IHC Program through the Executive Director. Members shall also provide written notice to the IHC Program of all dispositions of such requests by the Commissioner, within 15 days of such disposition. **All such notices shall be sent to the address set forth at N.J.A.C. 11:20-2.1(h).**

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