

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Health Benefit Plan
Electronic Receipt and Transmission of Health Care Claims
Use of Clearinghouses in Electronic Transactions

Proposed Amendments: N.J.A.C. 11:22-3.2 and 3.8

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

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, and 17B:30-23.

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

Proposal Number: PRN 2005-407

Submit written comments by January 6, 2006 to:

Douglas A. Wheeler, Assistant Commissioner
Department of Banking and Insurance
Legislative and Regulatory Affairs
20 West State Street
P.O. Box 325
Trenton, NJ 08625-0325
Fax: (609) 292-0896
E-mail: Legsregs@dobi.state.nj.us

The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to amend N.J.A.C. 11:22-3, Electronic Receipt and Transmission of Health Care Claims. The Department originally proposed these rules as part of its obligation to satisfy the requirements of the Health Information Electronic Data Interchange Technology Act commonly known as "HINT," N.J.S.A. 17B:30-23.

One aspect of HINT provides for the electronic receipt and transmission of health care claim information. Most electronic health care claims pass through clearinghouses as they go back and forth between providers and payers. The Department notes that recent compromises of the privacy of personal identity information in the banking and credit card industry has caused concern regarding protected health care information. Therefore, the Department is proposing amendments to its rules that require payers who elect to use clearinghouses for the handling of electronic transactions to only use clearinghouses that have been accredited by a national standard setting organization.

Payers, providers and clearinghouses are already obligated by the privacy and security provisions of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 (HIPAA), to achieve certain levels of compliance. Thus, these amendments are simply a way of assuring that clearinghouses are adhering to required standards.

The Department seeks to amend N.J.A.C. 11:22-3.2 by adding a definition for “clearinghouse” or “healthcare clearinghouse.” The Department’s amendments to N.J.A.C. 11:22-3.8 require that, when payers elect to use a clearinghouse for the handling of electronic transactions as required by this subchapter, they only use a clearinghouse that has been accredited by a national standards setting organization. The Department’s amendments require the national standards organization that desires to accredit clearinghouses to submit proof of compliance with the Department’s rules. Additionally, this provision is being amended to specify competency, practices and procedures that should be covered by the organization’s accreditations criteria. The Department’s amendment also provides that the provisions of subsections (b) and (c) are not operative until 180 days after the effective dates of these rules.

A 60-day comment period is provided 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

The proposed amendments will benefit the public because these amendments will require that health care claim clearinghouses be accredited. This requirement will aid in ensuring that an insured's health care information is protected from being hacked or misused.

Economic Impact

The proposed amendment will not have an economic impact on the Department. The proposed amendments do not require payers to use clearinghouses. These amendments require payers that elect to use a clearinghouse to ensure that the clearinghouse is properly accredited by a national standards setting organization. Clearinghouses that wish to provide this type of service will incur costs associated with becoming accredited. The Department anticipates that the cost for accreditation is approximately \$10,000 for a two-year period. The Department notes that it does not license or regulate "clearinghouses."

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments do not exceed standards in HIPAA or any Federal requirement or standards.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of these proposed amendments.

Agriculture Industry Impact

Pursuant to P.L. 1998, c. 48, the Right to Farm Act and N.J.S.A. 52:14B-4(a) of the Administrative Procedures Act, the Department does not anticipate any impact on the agriculture and related industries in this State from the proposed amendments.

Regulatory Flexibility Analysis

The proposed amendments may apply to some payers that constitute “small businesses” as that term is defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Department does not believe that it would be appropriate to reduce, alter or eliminate the requirements of the proposed amendments based on the size of the payer involved. Payers are not required to use clearinghouses. Where, however, they elect to use a clearinghouse, the Department believes that there should be uniform and adequate standards or criteria for the protection of the privacy of all claimants’ health information that all clearinghouses must meet, since they will be handling protected health care information on behalf of payers. The Department does not anticipate the need for professional services as a result of the proposed amendment. Therefore, no relaxation of the proposed amendments based on business size has been provided.

Smart Growth Impact

The proposed amendments will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

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

11:22-3.2 Definitions

The following words, phrases and terms, when used in this subchapter, shall have the meanings, as set forth below, unless the context clearly indicates otherwise:

“Clearinghouse” or “healthcare clearinghouse” means a public or private entity, including a billing service, repricing company, community health management information system or community health information system, and “value-added” networks and switches, that does either of the following functions:

1. Converts or facilitates the conversion of health information, that is received from another entity in a nonstandard Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, (HIPAA) format or containing nonstandard data content, into standard, HIPAA data elements or a standard HIPAA transaction; or

2. Receives a standard HIPAA transaction from another entity and converts or facilitates the conversion of health information into nonstandard format or nonstandard data content for the receiving entity.

11:22-3.8 Use of clearinghouses in electronic transactions

(a) (No change.)

(b) In those instances where a payer elects to use the services of a clearinghouse (including a clearinghouse that is an affiliate of a payer) for the receipt, transmission, processing, storage and/or other handling of those electronic transactions required by this subchapter, a payer shall only use a clearinghouse that has been accredited by a national standards development organization that is properly authenticated and registered with the United States Attorney General and the Federal Trade Commission pursuant to the provisions of the National Cooperation Research and Production Act of 1993, 15 USC §§ 4301 et seq.

(c) A national standards development organization that desires to accredit clearinghouses in the manner provided in this section may submit proof of its qualifications to do so as set forth in (b) above and a copy of its accreditation criteria or standards, and shall comply with the requirements set forth in (d) below.

(d) The accreditation of a clearinghouse by a national standards development organization shall measure the competency, assets, practices and procedures of the clearinghouse as to the following criteria:

1. Technical capacity and electronic facilities for the receipt, transmission and handling of electronic transactions;

2. Ability to process HIPAA complaint transactions;

3. Backup and disaster recovery plans and capacity;

4. Privacy practices, procedures and employee training programs consistent with HIPAA and Health Information Electronic Data Interchange Technology Act, N.J.S.A. 17B:30-23 et seq. (HINT);

5. Security practices, procedures and employee training programs consistent with HIPAA and HINT; and

6. Compliance with the proper procedure for the existence and review of the business associate and trading partner agreements as defined in HIPAA.

(e) Payers shall not be required to comply with the provisions of (b) and (c) above until (180 days after the effective date of these rules).