

**INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE**

**New Jersey Workers' Compensation
Managed Care Organizations**

Proposed Readoption with Amendments: N.J.A.C. 11:6

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-1:15(e), 34:15-15 and 34:15-88

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

Proposal Number: PRN 2008-340

Submit comments by December 19, 2008 to:

Robert J. Melillo Chief
Legislative and Regulatory Affairs
New Jersey Department of Banking and Insurance
20 West State Street
PO Box 325
Trenton, NJ 08625-0325
(FAX) (609) 292-0896
Email: Legsregs@dobi.state.nj.us

The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt with amendments N.J.A.C. 11:6, New Jersey Workers' Compensation Managed Care Organizations (WCMCO.) The expiration date of this chapter is June 21, 2009, pursuant to N.J.S.A. 52:14B-5.1 and N.J.A.C. 1:30-6.4. The Department has reviewed the current rules and has determined that they continue to be necessary, reasonable and proper for the purpose for which they were

originally promulgated. The rules which are found in Subchapter 2 provide a framework for encouraging the use of managed care to furnish injured workers with such medical, surgical and other treatments and hospital service as may be necessary to cure and relieve the worker of the effects of the injury. The framework further serves to contain medical costs under workers' compensation coverage by providing eligible employers with a method whereby they may select a managed care alternative to traditional workers' compensation medical care at a reduced premium. The rules continue to be necessary to meet these ends.

In addition, the Department has proposed amendments to the rules to reflect the transfer of Office of Managed Care of the Department of Health and Senior Services to the Department of Banking and Insurance by Reorganization Plan No. 005-2005, 37 N.J.R. 2737(a). To reflect this change, specific references to the Department of Health and Senior Services are removed throughout the subchapter. The subchapter, which the Department proposes readopting, sets forth the following:

N.J.A.C. 11:6-2.1 sets forth the purpose and scope of the chapter.

N.J.A.C. 11:6-2.2 sets forth the definitions of certain words and terms that appear in the chapter. References to the Department of Health and Senior Services are removed from the definitions for "approved worker's compensation managed care organization" and "report."

N.J.A.C. 11:6-2.3 sets forth the effect and the duration of the approval given to WCMCOs by the Department. References to consultation with the Department of Health and Senior Services are removed from N.J.A.C. 11:6-2.3(a) and (b).

N.J.A.C. 11:6-2.4 sets forth the requirements a WCMCO must meet in order to provide medical services to injured workers under a workers' compensation policy.

N.J.A.C. 11:6-2.4(a) sets forth the requirement of an annual report on a form provided by the Department, which shall include the WCMCO's income, expenses, gains or losses; the number of new cases; the number of claims submitted to the WCMCO; the total provider charges; and the total sums paid to providers. The address to which the annual report shall be submitted is changed to the address for the Office of Life and Health Insurance.

N.J.A.C. 11:6-2.4(b) requires that the WCMCO report all changes in operations within 30 days including, but not limited to, contractual changes, name changes, mergers, acquisitions and sales of the WCMCO and/or the preferred provider organizations serving as the network.

N.J.A.C. 11:6-2.4(c) sets forth the criteria that WCMCOs providing medical services to injured workers under a workers' compensation insurance policy must meet.

N.J.A.C. 11:6-2.5 sets forth the procedures for submission of applications for approval as a WCMCO, as well as the required information and documentation which must accompany the application.

N.J.A.C. 11:6-2.5(a) is amended to require a WCMCO to send two copies of the written application to the Department. References to the Department of Health and Senior Services and its address are removed.

N.J.A.C. 11:6-2.5(b) sets forth the information that must be provided in an application for a WCMCO. References to the Department of Health and Senior Services are removed.

N.J.A.C.11:6-2.5(c) states that the Department will retain the documentation referenced in N.J.A.C. 11:6-2.5(b) and requires WCMCOs to report significant changes in the WCMCO's nature as reflected in those materials. A reference to consultation with the Department of Health and Senior Services is removed.

N.J.A.C. 11:6-2.5(d) sets forth the time for review and approval or denial of applications. A reference to consultation with the Department of Health and Senior Services is removed.

N.J.A.C. 11:6-2.6 sets forth the principles of confidentiality for the data contained in the WCMCO application. A reference to the Department of Health and Senior Services is removed.

N.J.A.C. 11:6-2.7 sets forth the standards for approval and for suspension or revocation of approval of a WCMCO by the Commissioner. This rule also sets forth the process for suspension or revocation of approval by the Commissioner. A reference to the Department of Health and Senior Services is removed.

N.J.A.C. 11:6-2.8 sets forth requirements for the monitoring and auditing of WCMCOs. A reference to the Department of Health and Senior Services is removed.

N.J.A.C. 11:6-2.9 sets forth the fee to be submitted by a WCMCO with its application. A reference to the Department of Health and Senior Services is removed and the entire fee is made payable to the Department.

N.J.A.C. 11:6-2.10 sets forth the minimum provisions required in a WCMCO provider agreement and the filing requirements for those agreements.

N.J.A.C. 11:6-2.11 sets forth the minimum standards for a fraud detection plan which must be implemented for identifying and reporting instances of possible fraud on the part of injured workers, employers, medical providers and others.

N.J.A.C. 11:6-2.12 sets forth the minimum WCMCO treatment standards and protocols.

N.J.A.C. 11:6-2.13 sets forth minimum standards for early return to work programs.

N.J.A.C. 11:6-2.14 sets forth the minimum standards for methods of peer review and utilization review.

N.J.A.C. 11:6-2.15 sets forth the financial requirements for WCMCOs. N.J.A.C. 11:6-2.15(f) is amended to reduce the number of copies of audited annual reports that shall be submitted to one.

A 60-day comment period is provided on 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

The rules proposed for readoption should continue to have a positive effect on New Jersey WCMCOs, employees who use these organizations and their employers. The existing rules continue to set forth a framework for an alternative method of providing quality care to injured employees while allowing employers to reduce their costs. The use of WCMCOs allows injured workers to receive prompt, appropriate, quality medical care for compensable workplace injuries at a lower cost to insurers and employers. The codification of minimum standards for care and quality of WCMCO services will continue to have a direct positive effect on workers by ensuring them prompt, appropriate and quality medical care. Employers will benefit from the minimum standards by being assured that their employees receive quality care. The regulations relating to financial requirements and fraud prevention plans will continue to help to ensure the financial integrity of the WCMCOs, which will benefit all those affected. The proposed amendments and rules proposed for readoption also continue to allow the Department to fulfill its regulatory duties, and enhance its ability to do so by providing clear and comprehensive guidelines.

Economic Impact

While there will be some negative economic impact on WCMCOs because of the continuing costs of compliance with the existing rules, such as the continuing cost of maintaining malpractice insurance, and the compliance costs associated with record keeping and reporting, overall the rules proposed for re adoption with amendments should have a favorable economic impact on New Jersey WCMCOs, the employees who use these organizations, and their employers. WCMCOs will continue to be able to offer workers compensation recipients their services and receive remuneration for those services. Injured workers will continue to receive quality care and their employers will continue to use this lower cost alternative to traditional workers' compensation insurance.

WCMCOs will also continue to be economically impacted by the rules proposed for re adoption. The WCMCOs will continue to bear the costs to submit annual reports and audited financial reports, including the costs related to the certification of those reports by a certified public accountant (CPA.) New WCMCOs will also bear the cost of an application fee, and all WCMCOs will be responsible for the costs of any necessary financial examinations.

There will continue to be little or no economic effect on workers or their employers beyond the ameliorative effect utilizing the WCMCO option can have on the cost of Workers Compensation coverage as a result of these amendments and readopted rules. The Department anticipates that the rules proposed for re adoption with amendments will not affect the monetary level of benefits available to workers.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for re adoption and the proposed amendments are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that the rules proposed for re adoption and amendments will result in the generation or loss of jobs. The Department invites commenters to submit any data or studies concerning the jobs impact of the rules proposed for re adoption and amendments together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the rules proposed for re adoption and amendments.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is required because some of the WCMCOs may be small businesses as defined in the New Jersey Regulatory Flexibility Act. See N.J.S.A. 52:14B-17. Reporting and compliance requirements, which affect all WCMCOs regardless of size, can be found in the rules proposed for re adoption. See the Summary above for discussion of the reporting and compliance requirements and see the Economic Impact above for discussion on the costs of these requirements.

The rules proposed for re adoption and amendments provide no different requirements specifically based on business size. Businesses of all sizes will be required to use

professional services for compliance, such as the use of a CPA as discussed above. The rules proposed for readoption and amendments enforce a regulatory framework to ensure that WCMCOs meet minimum standards, while ensuring their financial viability and stability. This purpose does not provide for different compliance requirements based on business size. Accordingly, the proposed amendments and rules proposed for readoption provide no differentiation in compliance based on business size.

Smart Growth Impact

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

Housing Affordability Impact

The rules proposed for readoption and amendments will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules proposed readoption with amendments concern requirements for workers compensation managed care organizations.

Smart Growth Development Impact

The rules proposed for readoption and amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption and amendments concern requirements for workers compensation managed care organizations.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:6.

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

11:6-2.2 Definitions

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

. . .

“Approved workers’ compensation managed care organization” means a workers’ compensation managed care organization which has been approved by the Department [in consultation with the Department of Health and Senior Services].

. . .

"Report" means medical information transmitted in written form containing relevant subjective and objective findings. Reports may take the form of brief or complete narrative reports, a treatment plan, a closing examination report, or any forms as prescribed by the Department [or the Department of Health and Senior Services].

. . .

11:6-2.3 Approval of workers' compensation managed care organizations

(a) The completion by a WCMCO of the approval process conducted by the Department[, in consultation with the Department of Health and Senior Services,] under this subchapter shall

authorize the approved WCMCO to provide medical services under a workers' compensation policy after the insurer has filed an application with CRIB to obtain approval of a minimum five percent overall premium reduction for the insured's election to use a Department-approved managed care system for workers' compensation medical coverage. An approval issued under this subchapter shall not be used for any purpose except as set forth in this subchapter.

(b) The approval issued to a WCMCO under this subchapter by the Department [in consultation with the Department of Health and Senior Services] shall continue in force excepting suspension, automatic expiration or revocation pursuant to this subchapter. If the WCMCO does not contract with any insurers during the initial two years of approval, the WCMCO's approval will automatically expire on the December 31st following the two-year anniversary of that initial approval.

11:6-2.4 Requirements of approved workers' compensation managed care organizations

(a) WCMCOs shall submit an annual report by April 30th of each year to the Department of Banking and Insurance on a form provided by the Department which shall include income, expenses, gains or losses, number of new cases received since the prior report, number of claims submitted since the prior report, total provider charges, and total sums paid to providers. The annual report shall be submitted to the following address:

New Jersey Department of Banking and Insurance

Office of [Solvency Regulation] **Life and Health Insurance**

20 West State Street, **11th Floor**

PO Box 325

Trenton, NJ 08625-0325

(b) The WCMCO shall report all changes in operations to the Department within 30 days of said change(s), including, but not limited to, contractual changes, name changes, mergers, acquisitions, sales of the WCMCO and/or the preferred provider organizations serving as the network or any changes at the [following] **address shown in (a) above.**[:

New Jersey Department of Banking and Insurance

Office of Life and Health Insurance

20 West State Street - 11th Floor

PO Box 325

Trenton, NJ 08625-0325]

(c) (No change.)

11:6-2.5 Workers' compensation managed care organization approval procedures

(a) For purposes of obtaining the Commissioner's approval under this subchapter, a WCMCO shall submit [one copy] **two copies** of a written application to the Department of Banking and Insurance [and one copy to the Department of Health and Senior Services] at the following address[es]:

New Jersey Department of Banking and Insurance

Insurance Division/Office of Life and Health

20 West State Street--11th Floor

PO Box 325

Trenton, NJ 08625-0325

[New Jersey Department of Health and Senior Services
Office of Managed Care
John Fitch Plaza
Market and Warren Streets
PO Box 367
Trenton, NJ 08625]

(b) The WCMCO application shall include the following:

1. – 12. (No change.)

13. Copies of contracts and/or agreements between the WCMCO and any provider network subcontractors. Copies of executed signature page(s) of such contract, agreement or other document for each subcontractor shall be sent [to the Department of Health and Senior Services] only upon request;

14. Specimen copies of provider contract(s), agreement(s) or other documents of a similar nature between the WCMCO or its subcontractors and each participating medical service provider or health care provider representative or subcontractor. Copies of executed signature page(s) of such contract, agreement or other document for each provider shall be sent [to the Department of Health and Senior Services] only upon request. All provider agreements or amendments shall comply with the provisions or N.J.A.C. 11:6-2.10;

15. – 26. (No change.)

27. Any other materials specifically requested by the Commissioner [or the Commissioner of Health and Senior Services] in connection with a particular application.

(c) The materials specified in (b) above shall be retained by the Department [and referred to the Department of Health and Senior Services for consultation as necessary]. Any significant changes to the nature of the WCMCO's operations as reflected in these materials or changes to any items in (b) above, either during or after the approval process, shall be reported to the Department within 30 days.

(d) The Department[, in consultation with the Department of Health and Senior Services,] shall review these documents and grant approval, within 60 days of the WCMCO's filing a complete application, to those WCMCOs deemed to meet the criteria set forth in this subchapter. The Commissioner may extend the 60-day time frame an additional 30 days for good cause shown and shall provide notice to the WCMCO of such extension. A decision to deny approval shall be accompanied by a written explanation by the Department of the reasons for denial.

11:6-2.6 Confidentiality of WCMCO application

(a) All data or information contained in a WCMCO's application for approval as set forth in N.J.A.C. 11:6-2.5(b) is confidential, not subject to disclosure under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and will not be disclosed by the Department [or the Department of Health and Senior Services] to any person other than their employees and representatives, except the following items:

1 – 7. (No change.)

11:6-2.7 Approval suspension and revocation

(a) – (b) (No change.)

(c) If the Commissioner denies WCMCO approval under this subchapter or suspends or revokes WCMCO approval for any of the reasons set forth in this subsection, the WCMCO may request a hearing on the Commissioner's determination within 10 days from the date of receipt of such determination.

1. (No change.)

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

3. (No change.)

11:6-2.8 Monitoring; auditing

(a) (No change.)

(b) The Department [and together with the Department of Health and Senior Services,] shall monitor and conduct periodic audits of the approved WCMCO as necessary to ensure compliance with the WCMCO approval criteria set forth in this subchapter.

(c) (No change.)

11:6-2.9 Filing and review fees

[(a)] Every WCMCO filing for approval of its managed care program under the procedures set forth in N.J.A.C. 11:6-2.5 shall pay a one-time non-refundable application fee[s]

of [\$1,500] **\$3,000** payable to the ["Department of Health and Senior Services" and \$ 1,500 payable to the] "Department of Banking and Insurance." The fee[s] shall be included with the application.

11:6-2.15 Financial requirements for WCMCO

(a) – (e) (No change.)

(f) [Two copies] **A copy** of the audited annual reports shall be submitted to the following address:

Office of Solvency Regulation

New Jersey Department of Banking and Insurance

20 West State Street

PO Box 325

Trenton, New Jersey 08625-0325