

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF PROPERTY AND CASUALTY

Medical Fee Schedules: Automobile Insurance Personal Injury Protection and Motor Bus
Medical Expense Insurance Coverage

Home Care Services

Proposed Repeal and New Rule: N.J.A.C. 11:3-29 Appendix, Exhibit 3

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

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 39:6A-4.6.

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

Proposal Number: PRN 2008- 376

Submit comments by January 2, 2009 to:

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The agency proposal follows:

Summary

N.J.S.A. 39:6A-4.6(a) requires the Commissioner of the Department of Banking and Insurance (Department) to promulgate and biennially review medical fee schedules for the reimbursement of health care providers providing services or equipment for which reimbursement is made under the medical expense benefit of the Personal Injury Protection (PIP) coverage and medical expense benefits by motor bus insurers. The statute requires

that the fee schedules “incorporate the reasonable and prevailing fees of 75 percent of the practitioners” within a region. The medical fee schedules establish per service limits of liability for reimbursement of medically necessary services provided as part of the PIP coverage.

The current Home Care Fee Schedule was adopted effective April 7, 2003. The Department now proposes to repeal that fee schedule and replace it with a new home care fee schedule that reflects current reimbursement levels. In developing the proposed fee schedule, the Department acknowledges the assistance of the New Jersey Home Care Association. The per-visit fees on the schedule are an average of those used by Medicare, the largest payor for these types of services. The private duty care fees are based on those charged by agencies that provide these types of services. The services on the fee schedule are now described by the Federal Center for Medicare and Medicaid Services (CMS) Common Procedure Code System, known as “HCPCS.” This should make it easier for providers to bill these services.

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

The proposed repeal and new rule affect automobile insurers, purchasers of automobile insurance and health care providers who provide medical services to New Jersey resident insureds injured in accidents involving automobiles and/or buses.

The home care fee schedule has been updated to “incorporate the reasonable and prevailing fees of 75 percent of the practitioners within the region” as required by N.J.S.A. 39:6A-4.6a.

Economic Impact

The medical fee schedules and rules are intended to establish limits on the amount of medical expenses paid by auto insurers on behalf of New Jersey residents who are injured in automobile or bus accidents, thereby lowering the cost of automobile personal injury protection coverage and motor bus medical expense coverage in New Jersey.

The fees for the codes on the new Exhibit 3 have been increased over the amounts reflected on the schedule proposed for repeal. Thus, the providers of the health care services covered by the new schedule will receive reimbursement amounts higher than those paid under the current schedule. Health care providers and insurers will incur some cost, initially, as a result of incorporating the revised fee schedules and rules into their respective billing and claims payment systems and procedures. The Department does not believe that these costs will be substantial.

Additionally, the Department believes that the proposed repeal and new rule will have a favorable economic impact on insurers and providers by eliminating many costly disputes and ensuring that fees are uniform and not excessive. This rule should also reduce inefficiency in billing and payment fraud and enhance competition, all of which should exert downward pressure on private passenger auto insurance rates. As amended, these rules should also continue to provide a reasonable and prevailing level of reimbursement to providers.

Federal Standards Statement

A Federal standards analysis is not required because the medical fee schedules and rules are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate the creation of any jobs as a result of the proposed repeal and new rule. The Department invites commenters to submit any data or studies regarding the jobs impact of this proposal together with any written comments on other aspects of this proposal.

Agriculture Industry Impact

The proposed repeal and new rule will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The Department's proposed repeal and new rule will apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These "small businesses" are insurance companies authorized to write private passenger automobile insurance and/or motor bus medical expense coverage.

The new rule will require that all automobile and motor bus insurers, including those qualifying as small businesses, implement the proposed fee schedule changes. Since medical fee schedules for automobile and motor bus insurers have been utilized for many

years, the Department does not believe that compliance with the proposed new rule will require any additional professional services other than those used by insurers as part of their regular claim review processes. Insurers may incur a one time cost to distribute the new fee schedules, make necessary system adjustments, and for the training of personnel in the new rules. Accordingly, the Department does not believe that the requirements set forth in the proposed new rule impose any undue burden on insurers.

The proposed new rule provides no different reporting, recordkeeping or other compliance requirements based on business size. The requirement that the maximum reimbursement for treatment of injuries sustained in automobile accidents be established by the fee schedule is set by statute, N.J.S.A. 39:6A-4.6, which does not provide for any exceptional treatment based upon insurer size. To ensure that New Jersey resident insureds receive adequate treatment of injuries covered by PIP provisions and that policyholders receive the cost containment benefits that the statutory no-fault auto insurance system was intended to provide, it is important that all automobile accident claims be administered in a similar manner. Thus, the utilization of different compliance requirements would not be desirable, feasible or consistent with the intent of N.J.S.A. 39:6A-4.6. Therefore, for the reasons discussed above, and to continue to ensure consistency in the benefits provided to New Jersey insureds under their PIP automobile insurance coverage, no differentiation in compliance requirements is provided based on business size.

Housing Affordability Impact

The proposed repeal and new rule will not have an impact on housing affordability because these rules relate to the medical fee schedules which are intended to establish

limits on the amount of medical expenses paid by insurers on behalf of New Jersey residents who are injured in automobile or bus accidents.

Smart Growth Impact

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

Smart Growth Analysis

The Department believes that there is an extreme unlikelihood that these rules would evoke a change in housing production in Planning Areas 1 or 2 or within the designated centers under the State Development and Redevelopment Plan in New Jersey because the proposed repeal and new rule address PIP medical fee schedules which establish limits on the amount of medical expenses paid by auto insurers to reimburse medical providers on behalf of New Jersey residents who are injured in automobile or bus accidents.

Full text of the rule proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:3-29 Appendix, Exhibit 3.

Full text of the proposed new rule follows:

Exhibit 3**Fee Schedule – Home Care Services****Service**

PRIVATE NURSING CARE (PER HOUR)	HCPCS Code	Fee
Registered Nurse	S9123	70.00
Licensed Practical Nurse	S9124	65.00
Home Health Aide	S9122	24.00
Live-in attendant (per 24 hr shift)	S5126	180.00
HOME HEALTH VISITS (PER VISIT)	HCPCS Code	Fee
Registered Nurse	T1030	110.00
Physical Therapist	S9131	130.00
Speech Therapist	S9128	125.00
Occupational Therapist	S9129	125.00
Medical Social Worker	S9127	167.00