

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
OFFICE OF LIFE AND HEALTH

Organized Delivery Systems

Treatment as Domestic Insurer

Proposed New Rule: N.J.A.C. 11:22-4.10

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

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17:48H-1 et seq.

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

Proposal Number: PRN 2008-62.

Submit comments by May 16, 2008 to:

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The agency proposal follows:

Summary

N.J.A.C. 11:22-4, originally effective October 21, 2002, sets forth filing and other requirements for entities to be licensed as an organized delivery system (ODS) in this State, implementing N.J.S.A. 17:48H-1 et seq. An ODS is an entity organized for the purpose of facilitating the delivery of some or all of the health benefits under a health insurance contract.

N.J.S.A. 17:48H-16a provides that a licensed ODS, “which is organized under the laws of this State shall be treated as a domestic insurer for the purposes of P.L.1970, c.22 (C.17:27A-1 et

seq.) and P.L.1992, c.65 (C.17B:32-31 et seq.).” These sections govern insurance holding company systems and rehabilitation of life and health insurers. The Department of Banking and Insurance (Department) has become aware that the phrase in the statute “organized under the laws of this State” has apparently caused some confusion among ODSes as to whether or not a licensed ODS that was incorporated in a state other than this State would be treated by the Department as a domestic insurer under this statute. Historically, references to entities “organized in this State” have, with respect to insurers, been interpreted as referring only to entities formed under the laws in this State, and not to entities that are licensed to do business in this State, but are incorporated under the laws of another state. This approach ensures adequate oversight and regulation of insurers licensed to do business in New Jersey but incorporated under the laws of a different state because all United States jurisdictions have statutory schemes substantially similar to that in New Jersey, including the provisions in the Insurance Holding Company Systems Act (the Holding Company Act), N.J.S.A. 17:27A-1 et seq. and the Life and Health Insurer Rehabilitation and Liquidation Act (the Rehabilitation and Liquidation Act), N.J.S.A. 17B:32-31 et seq., and that are based on models adopted by the National Association of Insurance Commissioners. Accordingly, one state may reasonably rely that the versions of the Holding Company Act and the Rehabilitation and Liquidation Act that an insurer’s state of domicile has enacted will enable that state to oversee and regulate an entity domiciled there in a manner that is substantially similar to the oversight and regulation provided by the regulatory scheme – specifically, the Holding Company Act and the Rehabilitation and Liquidation Act as enacted in this State, thereby protecting New Jersey policyholders and the public in this State when an out-of-State entity is licensed to do business in New Jersey.

This is not the case, however, with the regulation of an out-of-State ODS. It appears that New Jersey is the only state that regulates these entities in the specific manner established by N.J.S.A. 17:48H-1 et seq. By providing that the Commissioner “shall have the authority to regulate any licensed [ODS] doing business in this State as a domestic insurer” (see N.J.S.A. 17:48H-26), the Legislature delegated to the Department the same regulatory oversight over out-of-State ODSes as in-State ODSes, thereby protecting the New Jersey consumer. Accordingly, the Department is proposing a new rule, N.J.A.C. 11:22-4.10, to provide explicitly that a licensed ODS incorporated in a state other than this State shall be treated as a domestic insurer for purposes of the Holding Company Act and the Rehabilitation and Liquidation Act. This will ensure that the protections the Legislature intended to provide to New Jersey insureds and residents with respect to the oversight of a licensed ODS are provided regardless of the state in which an ODS licensed in New Jersey is incorporated. To construe the statute otherwise would result in no oversight by any regulatory body of the acquisition of control of a licensed ODS incorporated outside this State. Moreover, the proposed new rule will clarify the operation of N.J.S.A. 17:48H-16 and 17:48H-26, to ensure that licensed ODSes are aware of these requirements.

A 60-day comment period has been 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

As noted in the proposal Summary above, the proposed new rule clarifies and confirms the Department’s authority with respect to a licensed ODS in this State and the application of

N.J.S.A. 17:27A-1 et seq. and 17B:32-31 et seq. to all licensed ODSes. This will eliminate any confusion that may exist regarding the applicability of these statutes to licensed ODSes incorporated in other states and will ensure that New Jersey policyholders and the public are afforded the protections of those statutes, consistent with the intent of the Legislature as expressed in N.J.S.A. 17:48H-16a and 17:48H-26.

### Economic Impact

Little or no economic impact is directly imposed by this proposed new rule. As noted in the proposal Summary above, the proposed new rule clarifies the application of N.J.S.A. 17:48H-16a and 17:48H-26, regarding the treatment of a licensed ODS as a domestic insurer for purposes of N.J.S.A. 17:27A-1 et seq. (the Holding Company Act) and 17B:32-31 et seq. (the Rehabilitation and Liquidation Act), regardless of the licensed ODS's state of incorporation. With respect to the Holding Company Act, entities seeking to acquire control of an ODS licensed in this State will, regardless of the licensee's state of incorporation, be required to comply with N.J.S.A. 17:27A-1 et seq., and incur the costs related thereto. These costs involve the compiling and filing of a "Form A" acquisition statement, which includes information regarding the acquirer's business operations, financial condition, and future plans for the entity being acquired. Entities engaged in these transactions should be in a position to readily provide this information. Compliance with these requirements would necessitate the use of financial and legal services. The Department believes that these services should be readily available, either in-house or on a contracted-for basis, to an entity engaged in the acquisition of control of another entity.

A licensed ODS will also be required to file appropriate filings under N.J.S.A. 17:27A-1 et seq., including "Form B" and "Form D" filings. These filings provide information related to

the interrelationship between the entities in the holding company system and to proposed transactions between the licensed ODS and its affiliates. Compliance with these requirements would similarly necessitate the use of financial and legal services. Again, the Department believes that these services should be readily available to an entity that has been licensed by the Department.

With respect to the Rehabilitation and Liquidation Act, N.J.S.A. 17B:32-31 et seq., there is little economic impact directly imposed on the acquiring entity itself. Application of this statute exists when the entity is found to be in an insolvent or impaired condition. The statute sets forth procedures and remedies the Commissioner of Banking and Insurance may utilize to help correct a hazardous financial condition or marshal the assets of the impaired or insolvent entity for the protection of policyholders and creditors, pursuant to a plan approved by the New Jersey Superior Court.

Application of these provisions to licensed ODSes will fulfill the intent of the Legislature to provide to policyholders and the general public the protections afforded by the Holding Company Act and the Rehabilitation and Liquidation Act, enable the Department to properly oversee the operations of a licensed ODS and take action when the entity's financial condition is threatened or impaired. The proposed new rule will economically benefit New Jersey policyholders and the public by helping to safeguard the financial interests of covered persons and their health care providers who deal with licensed ODSes that are incorporated in other states.

### Federal Standards Statement

A Federal standards analysis is not required because the proposed new rule is not subject to any Federal requirements or standards.

### Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed new rule.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposal together with their comments on other aspects of the proposal.

### Agriculture Industry Impact

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

### Regulatory Flexibility Analysis

The proposed 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. To the extent the proposed new rule applies to small businesses, it will apply to New Jersey domiciled ODSes and New Jersey domiciled entities seeking to acquire control of a licensed ODS.

As noted in the Economic Impact above, the Department does not believe that any undue burden will be imposed by the proposed new rule. As noted above, the proposed new rule is intended to clarify the application of N.J.S.A. 17:48H-16a to entities incorporated outside of this

State, which would not constitute a “small business” under the Regulatory Flexibility Act. The services that would be required are set forth in the Economic Impact above.

The proposed new rule provides no differentiation in compliance requirements based on business size. As noted above, the proposed new rule clarifies and confirms the operation of N.J.S.A. 17:48H-26, which authorizes the Department to “regulate any licensed organized delivery system doing business in this State as a domestic insurer,” and thereby treat an ODS licensed in New Jersey but incorporated in another state as a domestic insurer for the purposes of the Holding Company Act and the Rehabilitation and Liquidation Act. As noted above, the purpose the Holding Company Act and the Rehabilitation and Liquidation Act is to provide policyholders and the public with the protections afforded by those statutes, which are applicable to New Jersey domestic insurers. This goal, and the statutory requirements, do not vary based on business size.

#### Smart Growth Impact

The proposed new rule 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 proposal follows (addition indicated in boldface **thus**; deletions indicated in brackets [thus]):

**11:22-4.10 Treatment as domestic insurer**

**Regardless of the state in which it is incorporated, pursuant to N.J.S.A. 17:48H-16 and 26 a licensed organized delivery system shall be treated as a domestic insurer subject to N.J.S.A. 17:27A-1 et seq. and 17B:32-31 et seq.**

Recodify existing N.J.A.C. 11:22-4.10 through 4.13 as **4.11 through 4.14** (No change in text).

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