

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

Third Party Administrators of Health Benefits and Third Party Billing Services

Proposed Readoption with Amendments: N.J.A.C. 11:23

Authorized By: Kenneth E. Kobylowski Commissioner, Department of Banking and Insurance.

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

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

Proposal Number: PRN 2013-118.

Submit comments by October 4, 2013 to:

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The agency proposal follows:

Summary

On December 13, 2001, N.J.S.A. 17B:27B-1 et seq. (the "Act") was enacted.

The Act requires all third party administrators of health and dental benefits plans to be licensed or registered with the Commissioner of Banking and Insurance (Commissioner) and all third party billing services to be certified by the Commissioner. The Act sets forth various requirements including applicant information, the standards for approval of applications, annual reporting requirements, and fiduciary duties. In accordance with the Act, N.J.A.C. 11:23 was adopted effective April 4, 2005 and was due to expire April 4, 2010. That expiration date was extended by Executive Order No. 1 dated January 20, 2010, to allow for the completion of the review of administrative regulations and rules by the Red Tape Review Group appointed by Governor Christie and until the extended rules were readopted. 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. Accordingly, the Department proposes the re adoption of the chapter with several amendments to clarify and improve the rules.

Subchapter 1, General Provisions, includes N.J.A.C. 11:23-1.1, which sets forth the purpose and scope of the chapter, and N.J.A.C. 11:23-1.2, which defines the terms used throughout the chapter. The Department proposes to delete the definition of the terms “temporary initial license, registration or certification” from the definition section and the terms themselves throughout the chapter, as the terms refer to the temporary credentials issued for a limited time period following the initial adoption of the regulations to allow third party administrators and third party billing servicers operating in the State prior to the April 4, 2005 effective date of the Act to continue operating during the initial license or registration application process.

Subchapter 2 sets forth the license or registration requirements for third party administrators. The Department is proposing to remove the references to temporary registrations from this subchapter.

N.J.A.C. 11:23-2.4 sets forth the procedure for review of an application. The Department is proposing the addition of new subsection N.J.A.C. 11:23-2.4(g), which states that the Department may request from an applicant additional information that is needed prior to approving or disapproving an application. Failure of the applicant to respond to a written inquiry by the Department within 45 days will result in the application being considered withdrawn.

The Department is also proposing new section N.J.A.C. 11:23-2.6 to provide that applicants for licensure or registration may be subject to an organizational investigation or examination by the Department. Pursuant to N.J.S.A. 17B:27B-7, third party administrators are required to provide to the Commissioner access to all of their books and records for the purpose of examination, audit, and inspection. The proposed new rule specifies what materials may be examined in the course of such an organizational investigation or examination and that materials related thereto shall be confidential as set forth in N.J.S.A. 17B:27B-7a.

N.J.A.C. 11:23-3, Third Party Administrators, consists of nine sections. N.J.A.C. 11:23-3.1 requires written agreements between the administrator and the benefits payer, sets forth the provisions that the agreement must contain, and requires the agreement to be retained for the duration of the agreement and five years thereafter. N.J.A.C. 11:23-3.2 sets forth provisions concerning the books and records of a third party administrator. N.J.A.C. 11:23-3.3 sets forth the rules for compensation of third party administrators who

adjudicate claims. Commissions, fees, or charges based solely on the number or amount of claims denied or adjusted downward by the administrator are prohibited. N.J.A.C. 11:23-3.4 deems a third party administrator to act in a fiduciary capacity in the receipt and transmittal of the funds of benefits payers. N.J.A.C. 11:23-3.5 sets forth the requirement that all funds remitted to an administrator by a benefits payer licensed or authorized to do business in New Jersey be held in a separate account. N.J.A.C. 11:23-3.6 requires that policies, certificates, booklets, termination notices, or other written communications delivered by the benefits payer to the administrator be promptly delivered to enrollees by the administrator. N.J.A.C. 11:23-3.7 requires that a third party administrator notify the Commissioner of any change of control or other material fact affecting its qualifications for licensure, including changes in names or contracts and the addition of new clients or new benefits payers. N.J.A.C. 11:23-3.8 sets forth the requirement that third party administrators file an annual report on or before June 1. N.J.A.C. 11:23-3.9 sets forth the requirement that third party administrators shall not contract with or on behalf of a self-funded Multiple Employer Welfare Arrangement (MEWA) that is not registered pursuant to N.J.S.A. 17B:27C-1 et seq.

The Department is proposing to amend N.J.A.C. 11:23-3.7 to update the address of the Department to which notifications of material changes in the information specified in that rule are to be sent by third party administrators. The Department is also proposing to amend N.J.A.C. 11:23-3.8(a) and (b) to clarify the requirement that a third party administrator shall file an annual report. The annual report consists of a list of the complete names and addresses of all benefits payers with which the administrator had a contract in effect during the preceding calendar year, and the status of all contracts in

effect in the previous year and an audited financial statement. Currently, an unaudited annual report prepared on a generally accepted accounting principles (GAAP) basis must be submitted by March 1 and an audited annual report prepared on a GAAP basis must be submitted by June 1. The Department proposes amendments providing that a single annual report, consisting of an audited part and an unaudited part, with the audited part prepared according to GAAP, shall be filed on or before June 1 of each year. The Department also proposes an amendment stating that if the financial affairs of the third party administrator's parent company are audited by an independent certified accountant but those of the third party administrator are not, a copy of the most recent financial statement of the third party administrator's parent company, audited by an independent certified public account, shall be submitted.

In subsection (d), the requirement that three signed copies of the unaudited annual report be sent to the Department is proposed for deletion. One signed copy of both the audited and unaudited parts of the annual report shall be submitted to the Department.

N.J.A.C. 11:23-4 sets forth the grounds for suspension or revocation of a license or registration, or the imposition of a fine in lieu of suspension or revocation.

N.J.A.C. 11:23-5, Third Party Billing Services, sets forth the rules for third party billing services. The Department is proposing the removal of all language concerning temporary initial certification of third party billing services.

N.J.A.C. 11:23-5.1 requires anyone acting as a third party billing service in New Jersey to obtain certification as a third party billing service.

N.J.A.C. 11:23-5.2 sets forth the application filing requirements for certification as a third party billing service, including all of the information that must be included with

the application. A proposed amendment sets forth the Internet address of the Department's website.

N.J.A.C. 11:23-5.3 sets forth the information that an applicant for certification as a third party billing service shall provide to the Department.

N.J.A.C. 11:23-5.4 sets forth the minimum standards for approval of an application for certification as a third party billing service by the Commissioner. An amendment is proposed stating that prior to approving an application, the Department may request in writing any additional information that it may require from an applicant. The amendment further provides that failure by an applicant to respond to written inquiries by the Department within 45 days shall result in an application being deemed withdrawn.

N.J.A.C. 11:23-5.5 sets forth the standards for the Commissioner to deny an application for certification.

N.J.A.C. 11:23-5.6 requires that no third party billing service shall conduct business with a client without a written agreement and sets forth the minimum provisions to be included in such an agreement.

N.J.A.C. 11:23-5.7 provides that third party billing services that accept monies from health benefits payers on behalf of clients act in a fiduciary capacity on behalf of the clients in the receipt and transmittal of funds. The Department is amending this rule to delete the qualifying term "health," since the term "benefits payer" is defined in N.J.A.C. 11:23-1.2.

N.J.A.C. 11:23-5.8 requires a third party billing service to immediately notify the Commissioner of any fact or circumstance affecting its continuing qualification for certification, including any material change in its ownership or control.

N.J.A.C. 11:23-5.9 sets forth the standards for revocation or suspension of a third party billing service's certification.

N.J.A.C. 11:23-5.10 provides that the Commissioner may, upon notice and hearing, assess a civil administrative penalty in an amount not less than \$250.00 nor more than \$5,000 for each day that a third party billing service is in violation of the Act.

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 Department believes that New Jersey consumers, benefits providers, and insurers will continue to be positively affected by the safeguards and protections established by the regulatory framework applicable to the licensing, operation, and monitoring of third party administrators (TPAs) and the certification of third party billing services (TPBs). TPAs and TPBs will continue to be directly affected by the requirement to be licensed, registered, or certified, and by being subject to regulatory oversight.

The proposed new rule codifying that applicants for TPA licensure or registration are subject to organizational investigations or examinations either before or after being credentialed will have a positive social impact as such undertakings by the Department will better assure that applicants for licensure or registration as a TPA will be in a sound

financial condition and capable of fulfilling their responsibilities under the Act and that previously credentialed TPAs remain so.

Economic Impact

The Department believes that the rules proposed for readoption and the proposed amendments will have minimal negative economic effect on TPAs and TPBs that apply for a license, registration, or certification. These would result from their being required to bear the costs associated with submitting applications, completing the required documentation, and the performance of organizational investigations or examinations. The preparation of annual reports with some part thereof required to be audited, will negatively impact TPAs subsequent to their being credentialed as such by the Department. The application-related expenses will vary according to the type and size of the entity, whether the entity is applying for licensure, registration, or certification, and whether an organizational investigation or examination is performed. Any negative effects from the amendments to the annual report requirements will be slightly mitigated by the reduction in the number of copies of the annual report which TPAs must submit. While many of the administrative functions mentioned above may be completed in house with no additional staff, the annual audited financial statement required of TPAs will require the use of a professional accountant, who may or may not be on staff. The Department believes that these expenses are a reasonable and necessary cost of doing business.

The Department will continue to incur costs associated with processing applications and regulating TPAs and TPBs.

While the potential for a slight negative impact on consumers relating to the pass-through of the costs of the credentialing and annual report processes might exist, the Department believes that any adverse economic impact is outweighed by the benefits the rules provide to New Jersey consumers, insurers, and other entities with which these entities do business. Licensure, registration, or certification, and the oversight by the Department through organizational examinations and annual report reviews, will help assure consumers and insurers that these entities possess the financial capability to fulfill their contractual and legal obligations.

The Department invites interested parties to submit data or studies in the nature of a cost-benefit analysis of the proposed rules and amendments with any written comments they may submit on other aspects of this proposal.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption and the proposed amendments are 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 rules proposed for readoption and the proposed amendments. With the exception of the professional services of an accountant as discussed in the Economic Impact above, the Department believes that compliance with the rules proposed for readoption and the proposed amendments will be accomplished by in-house staff.

The Department invites commenters to submit data or studies concerning the job impact of the rules proposed for readoption with 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 readoption and the proposed amendments.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is required because some TPAs and TPBs may employ fewer than 100 full-time employees and therefore are “small businesses” as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Reporting and compliance requirements, which affect all TPAs and TPBs regardless of size, can be found in the rules. See the Summary above for a discussion of the reporting and compliance requirements and see the Economic Impact above for a discussion on the costs of these requirements.

The rules proposed for readoption and the proposed amendments provide no different reporting, recordkeeping, or other compliance requirements specifically based on business size. Businesses of all sizes will be required to use professional services for compliance, such as the accounting services as discussed above. The use of these services as well as various other reporting, recordkeeping, or other compliance requirements is mandated by the Act for businesses without regard to size. The rules proposed for readoption and the proposed amendments continue a regulatory framework

for the licensure, registration, or certification of TPAs and TPBs to ensure they possess the minimum qualifications necessary to protect New Jersey consumers and businesses with which these entities contract. Providing different compliance requirements based on business size would, therefore, thwart the intent of the Legislature as expressed in the Act. Consequently, the rules proposed for reoption and the proposed amendments provide no differentiation in compliance requirements based on business size.

Housing Affordability Impact Analysis

The rules proposed for reoption with 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 for reoption with amendments concern requirements for licensing and registration of third party administrators and third party billing services.

Smart Growth Development Impact Analysis

The rules proposed for reoption with 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 reoption with amendments concern requirements for requirements for licensing and registration of third party administrators and third party billing services.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:23.

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

SUBCHAPTER 1. GENERAL PROVISIONS

11:23-1.2 Definitions

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

...

["Temporary initial license, registration or certification" means a license, registration or certification issued by the Department for a limited period following April 4, 2005 which allows third party administrators or third party billing services operating in this State prior to April 4, 2005 to continue operating during the initial application process.]

...

SUBCHAPTER 2. LICENSE OR REGISTRATION REQUIREMENTS FOR THIRD PARTY ADMINISTRATORS

11:23-2.2 Application filing requirements for licensure or registration of third party administrators

[(a) Any third party administrator operating in this State prior to April 4, 2005 shall file an application for temporary initial licensure or registration by July 3, 2005. In addition to filing an application in accordance with (c) below, applicants for temporary initial licensure or registration shall file a certification on the form provided on the Department's website at www.njdobi.org/tpapage.htm. The applicant shall certify that the application is complete, the applicant is familiar with all the statutory and regulatory requirements applicable to third party administrators and that the applicant has met or exceeded those requirements. The applicant shall affirm that the Commissioner may rely on the certification in issuing a temporary initial license or registration.]

[(b)] **(a)** [Except for those who apply for temporary initial licenses or registrations by July 3, 2005, all] **All** third party administrators subject to licensure or registration shall obtain licensure or registration prior to operating in this State.

Recodify existing (c) - (d) as **(b) - (c)** (No change in text.)

11:23-2.3 Standards for approval of applications

(a) – (b) (No change.)

[(c) In the case of an applicant for temporary initial licensure or registration, the Commissioner may rely on the certification submitted pursuant to N.J.A.C. 11:23-2.2(a) in issuing a temporary, initial license or registration. Where the Commissioner has relied on such certification, the applicant shall be issued a temporary initial license or registration, which shall be valid for the lesser of a period of one year from the date of

issuance of the temporary initial license or registration, or until such time as the Commissioner approves or disapproves the application based on a detailed review. Applications which have not been approved or disapproved, or on which the applicant has not been notified that the application is incomplete within one year from date of issuance of the temporary initial license or registration shall be deemed approved.]

11:23-2.4 Procedures for review of applications

(a) – (f) (No change.)

(g) Prior to approving an application, the Department may request that an applicant provide, in writing, any additional information that the Department deems necessary to consider the application. Failure by an applicant to provide the requested information to the Department within 45 days from the date of the Department's written request shall result in an application being deemed withdrawn without further notice.

11:23-2.6 Organizational examinations

In addition to the application review, an organizational investigation or examination may be performed before or after an applicant is licensed or registered as a third party administrator. Such investigation or examination shall consist of a general survey of the third party administrator's corporate records, including charter, bylaws and minute books; verification of net worth; verification of principal place of business; determination of assets and liabilities; and a review of such other factors as the Commissioner deems necessary. The materials related to

such an investigation or examination shall be confidential as set forth in N.J.S.A. 17B:27B-7.

SUBCHAPTER 3. THIRD PARTY ADMINISTRATORS

11:23-3.7 Notification of material change

A third party administrator shall immediately notify the Commissioner in writing of any material change in its ownership, control, or other fact or circumstance affecting its qualifications for a licensure or registration, as applicable, including, but not limited to, a change in name, new or revised standard contracts, or any other information required by this subchapter to be supplied with an initial license application. The notification shall be provided to the Commissioner at:

New Jersey Department of Banking and Insurance
Office of [Life and Health] **Solvency Regulation**
PO Box 325
Trenton, NJ 08625-0325

11:23-3.8 Annual report

(a) A third party administrator shall file with the Commissioner on or before [March] **June** 1 of each year an [unaudited] annual report for the preceding calendar year[. The report shall be prepared on a generally accepted accounting principles (GAAP) basis and] **that shall consist of an audited and an unaudited part. The unaudited part shall** contain the complete names and addresses of all benefits payers with which the

administrator had a contract in effect during the preceding calendar year, and the status of all contracts in effect in the previous year.

(b) [An] **The audited part of the annual report for the preceding calendar year[,]** shall be prepared on a **generally accepted accounting principles (GAAP)** basis[, shall be filed on or before June1 of each year]. **If the financial affairs of the third party administrator’s parent company are audited by an independent certified public accountant, but those of the third party administrator are not, then a copy of the most recent audited financial statement of the third party administrator’s parent company, audited by an independent certified public accountant, shall be submitted.**

(c) The filing fee for the [audited] annual report shall be \$ 100.00.

(d) [Three] **One** signed [copies] **copy** of **each part of** the [unaudited and the audited] annual report[s] shall be submitted to:

New Jersey Department of Banking and Insurance
Office of Solvency Regulation
PO Box 325
Trenton, NJ 08625-0325

SUBCHAPTER 5. THIRD PARTY BILLING SERVICES

11:23-5.1 Acting as, or holding oneself out as, a third party billing service; certification required

(a) (No change.)

[(b) Any third party billing service operating in this State prior to April 4, 2005 shall file with the Department an application for temporary initial certification by August 2, 2005. In addition to filing an application in accordance with N.J.A.C. 11:23-5.2(a), applicants for temporary initial certification as third party billing services shall certify, on the form provided on the Department's website at www.njdobi.org/tpapage.htm, that the application is complete, the applicant is familiar with all of the pertinent statutory and regulatory requirements, and the applicant has met or exceeded those requirements. The applicant shall further acknowledge that the Commissioner may rely on the certification in issuing a temporary initial certification.]

[(c)] (b) [Except for those who apply for a temporary initial certification by August 2, 2005, all] **All** third party billing services shall obtain certification prior to operating in this State.

11:23-5.2 Application filing requirements

(a) Application for certification shall be made to the Commissioner on a form provided by the Commissioner **that can be found on the Department's website at www.dobi.nj.gov/tpapage.htm.**

(b) The following information shall accompany the application:

1.-8. (No change.).

11:23-5.4 Approval of certification application; standards

(a) (No change.)

(b) [In the case of an applicant for temporary initial certification as a third party billing service, the Commissioner may rely on the applicant's submissions and certification submitted pursuant to N.J.A.C. 11:23-5.1(b) in issuing a temporary, initial certification. Where the Commissioner has, on that basis, determined to do so, the applicant shall be issued a temporary initial certification, which shall be valid for the lesser of a period of one year from the date of issuance of the temporary initial certification or until such time as the Commissioner approves or disapproves the application based on a detailed review. Applications which have not been approved or disapproved, or where the applicant has not been notified that the application is incomplete, within one year from date of issuance of the temporary initial certification, shall be deemed approved.] **Prior to approving an application, the Department may request that an applicant provide, in writing, any additional information that the Department deems necessary to consider the application. Failure by an applicant to provide the requested information to the Department within 45 days from the date of the Department's written request shall result in an application being deemed withdrawn without further notice.**

11:23-5.7 Fiduciary duty of third party billing service; maintenance of separate accounts

(a) A third party billing service that accepts monies from [health] benefits payers on behalf of a client shall be deemed to act in a fiduciary capacity on behalf of the client in the receipt and transmittal of funds and shall have all responsibility attendant to a fiduciary as established by law.

(b) (No change).