

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

Health Maintenance Organizations

Health Care Quality Act Application to Insurance Companies, Health Service Corporations, Hospital Service Corporations, and Medical Service Corporations

Proposed New Rules: N.J.A.C. 11:24-8.9, 11:24-8 Appendix, 11:24A-5.3, and 11:24A-5 Appendix

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

Authority: N.J.S.A. 17:1-8.1 and 17:1-15.e; and P.L. 2011, c. 190 (codified as N.J.S.A. 26:2S-14.1 et seq.).

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

Proposal Number: PRN 2013-056.

Submit comments by May 31, 2013 to:

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The agency proposal follows:

Summary

P.L. 2011, c. 190 (codified as N.J.S.A. 26:2S-14.1 et seq.), approved January 17, 2012, and effective July 15, 2012, was intended to increase public awareness of the Independent Health Care Appeals Program (IHCAP Program) established pursuant to section 11 of P.L. 1995, c. 192 (N.J.S.A. 26:2S-11). The purpose of the IHCAP Program is to provide an independent medical necessity or appropriateness of services review of final decisions by health insurance carriers to deny, reduce, or terminate benefits in the event the final decision is contested by the covered person or by any health care provider acting on behalf of the covered person with the covered person's consent. The appeal review does not include any decisions regarding benefits not covered by the covered person's health benefits plan.

Specifically, Section 1 of the law (N.J.S.A. 26:2S-14.1) requires a licensed general hospital to post, in a conspicuous place in each of its waiting rooms for members of the general public, a notice that provides information about the operation of, and how to apply for, the IHCAP Program. Licensed general hospitals also must ensure that appropriate hospital staff are made aware of the IHCAP Program and are able to provide information to patients and their family members, or other persons on the patient's behalf, about how to contact the IHCAP Program. The law further requires licensed physicians to post the same notice in their waiting room.

Section 3 of the law (N.J.S.A. 26:2S-14.3) requires the Commissioner of the Department of Banking and Insurance (Department), in consultation with the Commissioner of the Department of Health (DOH) and the State Board of Medical Examiners (BME), to prescribe the size, content, and format of the notice about the IHCAP Program, and to make the notice available to general hospitals, physicians, and members of the general public by posting it on

the Department's website. The law further requires DOH and BME to adopt regulations implementing the provisions of the law in consultation with each other and the Department.

These proposed new rules provide notice to general hospitals and physicians of the law's IHCAP Program notice requirements, and prescribe the size, content, and format of the notice.

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 new rules will favorably impact members of the public who are covered under health benefits plans regulated by the Department. The requirement that the IHCAP Program notice be conspicuously posted in the waiting rooms of general hospitals and physicians' offices provides these individuals with an additional source of information concerning their appeal rights related to medical necessity or appropriateness of services determinations made by their health insurance carriers.

Economic Impact

The proposed new rules may favorably impact covered persons, general hospitals, and physicians if a carrier's medical necessity or appropriateness of services determination is successfully appealed to the IHCAP Program by providing another source of information about how to access that process. Carriers may be unfavorably impacted if they are required to provide benefits if an initial determination of denial is successfully appealed through the Program. General hospitals and physicians will be required to bear the cost of posting the IHCAP Program notices in accordance with the rules to be adopted by the DOH and the BME, respectively.

Federal Standards Statement

A Federal standards analysis is not required because the requirements contained in the proposed new rules are not subject to any Federal standards.

Jobs Impact

The Department does not believe that the proposed new rules will cause any jobs to be generated or lost.

Agriculture Industry Impact

The Department does not expect the proposed new rules to have any impact upon the State agriculture industry.

Regulatory Flexibility Analysis

The proposed new rules prescribe the content, size, and format of the IHCAP Program notice, which general hospitals and physicians will be required to post in their patient waiting rooms. Some of these physician offices may be "small businesses" as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, the Department is providing a regulatory flexibility analysis.

The requirements of the proposed new rules are set forth in the Summary above. While the additional costs a small business might incur cannot be quantified, it is unlikely that it will be necessary for the small business to engage additional professional services in order to comply with the new rules. Moreover, the law, which these proposed new rules implement, provides no exemption for small business, and the Department cannot differentiate between small business and other entities that are required to comply with the law's requirements. Accordingly, the proposed new rules apply to all such entities regardless of size.

Housing Affordability Impact Analysis

The proposed new rules will not have an impact on housing affordability because the proposed new rules address compliance with a new law requiring New Jersey general hospitals and physicians to post notices in their patient waiting rooms regarding the IHCAP Program.

Smart Growth Development Impact Analysis

The Department believes that there is no likelihood that these proposed new rules would evoke a change in the housing production in Planning Areas 1 and 2, or within the designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed new rules address compliance with a new law requiring New Jersey general hospitals and physicians to post notices in their patient waiting rooms regarding the IHCAP Program.

Full text of the proposed new rules follows (additions indicated in boldface **thus**):

(Agency Note: Proposed new N.J.A.C. 11:24-8 Appendix and 11:24A-5 Appendix reproduced below are not shown in boldface due to the inclusion of permanently boldfaced text within the Appendices.)

CHAPTER 24

HEALTH MAINTENANCE ORGANIZATIONS

SUBCHAPTER 8. UTILIZATION MANAGEMENT

11:24-8.9 Notice requirement

(a) Pursuant to N.J.S.A. 26:2S-14.1 and 45:9-22.26 and applicable rules of the Department of Health and the Board of Medical Examiners, respectively, all general hospitals licensed pursuant to N.J.S.A. 26:2H-12 et seq. and all physicians licensed pursuant to N.J.A.C. 13:35 are required to post in all patient waiting rooms within the hospital or in the physician's medical office a notice providing

information about, and how to apply for, the Independent Health Care Appeals Program (IHCAP) established pursuant to N.J.S.A. 26:2S-11. In accordance with N.J.S.A. 26:2S-14.2, the size, content, and format of the notice shall be as set forth in (b) below.

(b) The notice shall be in the format and include content that describes the appeals process, specifies applicable time limitations, and indicates the types of health benefits plans to which the IHCAP applies as set forth in the notice entitled "An Explanation of an Individual's Right to Appeal Health Insurance Determinations," incorporated herein by reference as the subchapter Appendix, and also posted on the Department's website at www.dobi.nj.gov/ihcpappeals/. If posted using multiple pages, each page of the notice shall be at least 8 ½ x 11 inches with print in 12-point type or larger. If displayed as a one-page poster, the poster shall be of sufficient size to depict all of the required text of the notice in print of at least 12-point type.

APPENDIX

[INSERT 11:24-8 APPENDIX]

CHAPTER 24A

HEALTH CARE QUALITY ACT APPLICATION TO INSURANCE COMPANIES,
HEALTH SERVICE CORPORATIONS, HOSPITAL SERVICE CORPORATIONS

AND MEDICAL SERVICE CORPORATIONS

SUBCHAPTER 5. INDEPENDENT HEALTH CARE APPEALS PROGRAM

11:24A-5.3 Notice requirement

(a) Pursuant to N.J.S.A. 26:2S-14.1 and 45:9-22.26 and applicable rules of the Department of Health and the Board of Medical Examiners, respectively, all general hospitals licensed pursuant to N.J.S.A. 26:2H-12 et seq. and all physicians licensed pursuant to N.J.A.C. 13:35 are required to post in all patient waiting rooms within the hospital or the physician's medical office a notice providing information about, and how to apply for, the Independent Health Care Appeals Program (IHCAP) established pursuant to N.J.S.A. 26:2S-11. In accordance with N.J.S.A. 26:2S-14.2, the size, content, and format of the notice shall be as set forth in (b) below.

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APPENDIX

[INSERT 11:24A-5 APPENDIX]