

**SYNOPSIS OF PROPOSED AMENDMENTS AND NEW RULES  
N.J.A.C. 11:24A, HEALTH CARE QUALITY ACT  
IMPLEMENTING THE FREEDOM OF REPRODUCTIVE CHOICE ACT**

The Department of Banking and Insurance (“Department”) intends to propose amendments to the rules at N.J.A.C. 11:24A-1.1 and a new subchapter in N.J.A.C. 11:24A. These amendments and new rule will implement the Freedom of Reproductive Choice Act, P.L. 2021, c. 375 (“the Act”), which codifies the fundamental constitutional right to freedom of reproductive choice, including the right to terminate a pregnancy. The Department is providing advance notice of the intended rulemaking action and is seeking your input on the proposed amendments and new rule.

The Act provides, among other things, that after concluding a study and issuing a report to the Governor and the Legislature demonstrating the necessity of such a regulation, the Department of Banking and Insurance (“Department”) may adopt regulations providing that health benefit plans delivered, issued, executed, or renewed in New Jersey, require coverage for abortion. The Act also provides that if the Department adopts a regulation establishing this coverage requirement, the Department is required to mandate that carriers grant, upon request of a religious employer, an exclusion under the contract for the required coverage if the coverage conflicts with the religious employer’s bona fide religious beliefs and practices.

On November 23, 2022, the Department concluded a study and issued a report to the Governor and Legislature demonstrating the need for a regulation to provide that health benefit plans delivered, issued, executed, or renewed in this State, provide comprehensive coverage for abortion. The Department intends to propose amendments to the rules and a new rule as summarized herein to comply with the requirements in the Act.

In the definitions section at N.J.A.C. 11:24A-1.2, the Department intends to propose to add a definition of “religious employer,” consistent with the Act, codified at N.J.S.A. 26:2S-39b.

Specifically, the Act defines "Religious employer" to mean an organization that is organized and operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986 (26 U.S.C. s.6033), as amended.

The Department intends to propose to add a new subchapter 2A, Coverage for Abortion Services. New rule N.J.A.C. 11:24A-2A.1 will provide the scope and purpose of the subchapter. Specifically, the subchapter will apply to all policies and contracts providing hospital or medical services or benefits that are delivered, issued, executed or renewed in this State in the individual, small group and large group markets as follows: all hospital service corporation contracts issued pursuant to N.J.S.A. 17:48-1 et seq.; all medical service corporation contracts issued pursuant to N.J.S.A. 17:48A-1 et seq.; all health service corporation contracts issued pursuant to N.J.S.A. 17:48E-1 et seq.; all health insurance policies issued pursuant to N.J.S.A. 17B:26-1 et seq., 17B:27-26 et seq., 17B:27A-2 et seq. and 17B:27A-17 et seq.; and all health maintenance organization contracts issued pursuant to N.J.S.A. 26:2J-1 et seq. The subchapter will not apply to any policy or contract which, pursuant to a contract between a carrier and the New Jersey Department of Human Services, provides benefits to persons who are eligible for medical assistance under P.L. 1968, c.413 (N.J.S.A. 30:4D-1 et seq.); the Children's Health Care Coverage program under P.L. 1997, c.272 (N.J.S.A. 30:4I-1 et seq.); the FamilyCare Health Coverage Program under P.L. 2000, c.71 (N.J.S.A. 30:4J-1 et seq.); or any other program administered by the Division of Medical Assistance and Health Services in the New Jersey Department of Human Services.

Proposed new rule N.J.A.C. 11:24A-2A.2 will set forth that except in the case of a religious employer that is granted an exclusion, carriers shall provide coverage, without limit or exclusion, for abortion services. As the Act does not address cost sharing, and thus does not authorize the

Department to modify cost sharing requirements, a carrier may apply cost sharing, including deductible, copayment or coinsurance, as applicable, to such services provided such cost sharing is also applied to similar services or coverages under the policy.

Proposed new rule N.J.A.C. 11:24A-2A.3 will set forth the rules concerning the religious employer exemption. Proposed new rule N.J.A.C. 11:24A-2A.3(a) will provide that a religious employer may request, and a carrier shall grant an exclusion for abortion coverage if the abortion coverage conflicts with the religious employer's bona fide religious beliefs and practices. If an exclusion is granted, a carrier is not permitted to exclude coverage for care that is necessary to preserve the life or health of a covered person or that is the result of an act of rape or incest.

Proposed new N.J.A.C. 11:24A-2A.3(b) will provide that a carrier that issues a policy or contract containing a religious employer exclusion shall provide written notice of such exclusion to each prospective insured or covered person. Such notice must be provided in the certificate or evidence of coverage, the covered person's application or enrollment form, and all sales and marketing materials.

Proposed new N.J.A.C. 11:24A-2A.3(c) will provide that for each religious employer request that a carrier grants, the carrier shall make an informational filing with the Department, including a form of the written notice provided to prospective insureds.

The full text of the existing rules may be accessed at [www.lexisnexis.com/hottopics/njcode/](http://www.lexisnexis.com/hottopics/njcode/).

Please provide any feedback you wish the Department to consider on the possible amendments to N.J.A.C. 11:24A and new rule by e-mail to [AdvanceNotice@dobi.nj.gov](mailto:AdvanceNotice@dobi.nj.gov) by December 7, 2022. Thank you for your participation in this important component of the rulemaking process.