

DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Health Benefit Plans
Exclusion and Preauthorization Requirements

Actuarial Services
Group Life, Group Health and Blanket Insurance:
General Standards for Contract Provisions

Adopted New Rules: N.J.A.C. 11:22-6

Adopted Amendments: N.J.A.C. 11:4-42.5

Proposed: June 2, 2003 at 35 N.J.R. 2396(a)

Adopted: January 22, 2004 by Holly C. Bakke, Commissioner, Department of Banking and Insurance

Filed: January 22, 2004 as R.2004 d.80, with substantive and technical changes not requiring additional public written comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1 and 15e, 17B:27-49g and 26:2J-43h

Effective Date: February 17, 2004

Expiration Date: November 6, 2005, N.J.A.C. 11:22;
November 30, 2005, N.J.A.C. 11:4

Summary of Public Comments and Agency Responses:

The Department received three comments from the following: Association of Health Plans; New Jersey Hospital Association; and Health Net.

COMMENT: One commenter expressed its support for the proposal.

RESPONSE: The Department thanks the commenter for its support.

COMMENT: Several commenters sought a change in the January 1, 2004 date by which all current non-complying forms would be deemed withdrawn. The commenter suggested a January 1, 2005 effective date so that health plans can adjust their operations accordingly.

RESPONSE: The Department agrees with the commenters and has amended the operative date to January 1, 2005.

COMMENT: Several commenters suggested that, in lieu of deeming forms withdrawn as of January 1, 2004, the Department should require the plans to file either a rider or an amendment to the existing form.

RESPONSE: Companies already have the ability to submit an amendment, rider, endorsement or replacement page by January 1, 2005 to bring the forms into compliance and avoid triggering the deemer provision. Therefore, no change is necessary.

COMMENT: Several commenters indicated that they do not object to a cap on the penalty when a prior authorization was not obtained. One commenter requested that the 50 percent cap be reviewed. The commenter indicated that if a patient has paid a premium and received medical care that is covered by the benefit plan, then the HMO should ensure that it reimburses the patient or provider for the care rendered that was part of the patient's benefit package. If, subsequent to a patient receiving care, the HMO determines that some or all of the care was not medically necessary, the HMO should then determine payment, rather than unilaterally deny all claims that do not reflect prior authorization.

RESPONSE: The 50 percent cap on the penalty for failing to obtain prior approval of medically necessary services applies to insurance companies (see N.J.A.C. 11:4-42.9(a)3) and is contained in the policies sold in the individual and small employer markets in New Jersey. It is the position of the Department that the same cap should apply in all markets and to all carriers.

Federal Standards Statement

A Federal standards analysis is not required because these adopted new rules and amendments are not subject to any Federal standards or requirements.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

11:4-42.5 Prohibited provisions

(a) – (i) (No change.

(j) Group policies and certificates providing life insurance may only include war exclusions that comply with N.J.A.C. 11:4-41.4(a)3i through iii. Any amount payable as a result of a death from an excluded act shall be no less than the total premiums paid by or on behalf of the covered person.

1. Forms filed before *[the effective date of this amendment]* ***February 17, 2004*** with non-complying war exclusions shall be administered in accordance with the standards of N.J.A.C. 11:4-41.4(a)3i through iii and shall be deemed withdrawn as of January 1, *[2004]* ***2005***.

11:22-6.5 Effect on previously filed forms

Forms filed before *[the effective date of this rule]* ***February 17, 2004*** with non-complying war exclusions and/or preauthorization provisions shall be administered in accordance with the standards of N.J.A.C. 11:22-6.3 and 6.4 and shall be deemed withdrawn as of January 1, *[2004]* ***2005***.

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