

**INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE**

**Hospital Care Payment Commission and New Jersey Hospital Care
Payment Fund**

Adopted Concurrent New Rules: N.J.A.C. 11:26

Proposed: November 5, 2003 at 35 N.J.R. 5439(a).

Adopted: April 16, 2004 by the Hospital Care Payment Commission,
Holly C. Bakke, Chairperson.

Filed: April 16, 2004 as R. 2004 d. 189, **without change**.

Authority: N.J.S.A. 17:1-8.1 and 15e and 17B:30-45.

Effective Date: April 16, 2004

Expiration Date: April 16, 2009

Summary of Public Comments and Agency Responses:

The Department received comments from Saint Peter's University Hospital, the New Jersey Hospital Association (NJHA), NCO Financial Systems, Inc., the New Jersey chapter of the Healthcare Financial Management Association (NJHFMA), and Besler healthcare consultants.

1. COMMENT: One commenter urged the Commission to consider the six-month period, during which the special adopted new rules remain effective, to be the initial phase of the program, and to solicit formal comments again at the end of the initial phase prior to readoption of the rules. The commenter stated that the initial phase will provide all parties with enough experience with the program

to recommend improvements to problematic areas that may not have been apparent prior to implementation.

1. RESPONSE: The Department does not believe that it is necessary to repropose these rules as suggested in the comment. The rules have now been in effect for several months, and have been proposed for reoption beyond the six-month period. If changes become necessary in the future as the program is implemented, amendments to the rules will be proposed and subject to public comment.

2. COMMENT: Three commenters stated that the program as presently designed is expensive and burdensome, and participation would not be cost-effective for most hospitals.

2. RESPONSE: While the Department acknowledges that there are certain costs attendant upon participation in the program, hospitals are reminded that participation is voluntary. Hospitals may continue to seek payment of unpaid debts through currently utilized means, such as collection agencies. Moreover, N.J.S.A. 54A:9-8.1, which established the Setoff of Individual Liability (SOIL) program, requires the Department of Treasury to retain a percentage of any proceeds of any collection setoff as shall be necessary to provide for any expenses of the collection effort. In addition, as was referenced in the Summary of the notice of special adoption and concurrent proposal of these new rules, based upon past practices many of the debts that will be eligible for submission to the Debt Collection Program would have been written off by the hospitals as

uncollectible. Thus, whatever net repayment the hospitals receive as a result of their future submission of debts to the program will have a positive effect on the hospital's finances. Furthermore, debts in amounts which are so low that their submission to the program would not be cost-effective need not be submitted.

3. COMMENT: Two commenters stated that the rules do not address how the State's share of recoveries from the program will be utilized, and recommended that the revenue be dedicated to Health Care Subsidy Fund rather than the General Fund.

3. RESPONSE: The enabling statute at N.J.S.A. 17B:30-44 requires the State's share of the revenue collected from the program to be deposited into the General Fund. The Commission has no authority to direct through its rulemaking how those funds should be utilized by the State Treasurer.

4. COMMENT: Four comments concerned the prohibition at N.J.A.C. 11:26-2.2(a)2 against individual debts being aggregated to reach a minimum debt amount of \$100.00. According to the commenters, copayment amounts seldom exceed \$100.00, and hospital collection agencies do aggregate accounts on referral in order to increase the probability of recovery. The commenters suggested that the rules be modified to parallel the best practices used by collection agencies.

4. RESPONSE: The Department disagrees. Hospital copayments are higher than other provider copayments. Moreover, many plans now use deductible and

coinsurance on network and out-of-network hospital services that far exceed \$100.00.

5. COMMENT: All the commenters expressed concern with the requirement at N.J.A.C. 11:26-2.2(a)3 that a hospital debt be no more than two years old to be eligible for the program. According to the commenters, most hospitals use one or more collection agencies for bad debt recovery, and would be referring accounts to the State after those cycles are completed. The commenters suggested that debts with a minimum age of three years from the date of discharge or service be eligible for the program.

5. RESPONSE: The Department agrees with the commenters. However, a change in the current requirements would be substantive in nature, requiring further public notice and comment pursuant to the Administrative Procedures Act at N.J.S.A. 52:14B-4. Accordingly, the Department is proposing, elsewhere in this issue of the New Jersey Register, a separate amendment to the rules' debt eligibility requirements at N.J.A.C. 11:26-2.2(a)3 to permit assignment either of debts with a maximum age of five years on the date of assignment to the Commission notwithstanding the number of attempts made by the hospital to collect the debt, or of those debts for which the hospital made at least two collection attempts prior to submission of the debt to the Program regardless of the age of the debt.

6. COMMENT: Four commenters stated that the fairness formula set forth at N.J.A.C. 11:26-2.2(a)4 will adversely affect current bad debt recovery efforts

because knowledgeable consumers will merely wait for a state-imposed discount before paying their hospital bill.

6. RESPONSE: The enabling statute at N.J.S.A. 17B:30-45 requires the Commission to determine the amount to be collected based upon a fairness formula, and specifically sets forth the basis for the formula for all debt processed by the Commission beginning with the fiscal year starting on July 1, 2003 .

7. COMMENT: Four comments concerned the requirement at N.J.A.C. 11:26-2.2(a)4 that the type of charge comprising the debt be identified as a deductible, copayment, coinsurance or a noncovered charge. According to the commenters, this would require manual screening of delinquent accounts, and would not be cost-effective.

7. RESPONSE: In order to determine whether a particular debt should be reduced pursuant to the fairness formula, the portion of the debt that may be comprised of coinsurance, copayments or deductibles must be identified because those amounts are not reduced. If a hospital cannot perform this identification function, all its submitted debt will be reduced by the fairness formula.

8. COMMENT: Three commenters stated that N.J.A.C. 11:26-2.4, which permits a debtor to appeal the validity of a debt, should be deleted because hospital collection agencies have already validated the debt in accordance with the provisions of the Federal Fair Debt Collection Practices Act prior to referral to the State.

8. RESPONSE: The enabling statute, N.J.S.A. 17B:30-47, requires the State, upon receipt of a voluntary assignment of debt from a hospital, to provide the debtor with the opportunity to challenge the validity of the debt.

9. COMMENT: Four commenters stated that there is no doubt that the State's ability to intercept income tax refunds and homestead rebates can increase bad debt recoveries for New Jersey's hospitals. According to the commenters, however, a more practical and cost-effective approach would be for the State to offer its SOIL capabilities directly to the collection agencies that are currently collecting bad debt on behalf of the hospitals. The commenters stated that these agencies have already validated the debt, thus avoiding the need for appeals; the agencies' fees are far less than the proposed 55 to 60 percent cost of participation in this program; hospitals currently have HIPAA business associate agreements in place with licensed agencies, and could amend their contracts to incorporate this added feature; the contracted agencies would monitor the account status and deal with patient issues as they currently do; and the State could charge the agencies an appropriate fee for this service, which the agencies could then pass along to hospitals in their invoicing processes, as they currently do with court costs.

9. RESPONSE: The purpose of the Setoff of Individual Liability (SOIL) program established pursuant to N.J.S.A. 54A:9-8.1 et seq. was to provide a system whereby claimant agencies and institutions of the State of New Jersey could collect outstanding debt owed to the State by a set-off against and

collection from an individual's State gross income tax refund and homestead property tax rebate. Pursuant to these rules, the Commission becomes the owner of hospital debts accepted into this Program. Accordingly, these debts are eligible for collection through the SOIL program. The SOIL program was not intended to be a vehicle for the collection of debt by private parties.

Federal Standards Statement

The requirements of these rules are the same as, but do not exceed, requirements imposed by the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § § 1301 et seq., and regulations promulgated thereunder by the United States Department of Health and Human Services, 42 CFR Parts 51a et al. and 45 CFR Parts 95 et al.

Full text of the adoption follows:

inoregs/bbHCPC