

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

**Third Party Administrators of Health Benefits and Third Party Billing Services**

**Adopted New Rules: N.J.A.C. 11:23**

Proposed: March 15, 2004 at 36 N.J.R. 1297(a)

Adopted: March 10, 2005 by Donald Bryan, Acting Commissioner, Department of Banking and Insurance

Filed: March 10, 2005 as R. 2005 d. 113, with technical changes not requiring additional public and comment (see N.J.A.C. 1:30-6.3)

Authority: N.J.S.A. 17:1-8.2, 17:1-15e and 17B:27B-1 et seq.

Effective Date: April 4, 2005

Expiration Date: April 4, 2010

Summary of Public Comments and Agency Responses:

Timely comments were received from Wilentz Goldman & Spitzer P.A., New Jersey Hospital Association, Electronic Medical Billing Network of America, Inc., AmeriHealth Insurance Company, Healthcare Billing & Management Association, AdvantEdge Healthcare Solutions, Richard Papperman and Insurance Administrator of America, Inc.

COMMENT: There were several comments which objected to requirements which were specifically required by the Act. Some of the pertinent requirements objected to included the requirement that financial statements be audited, the requirement to provide information concerning benefit payors and the requirement to maintain separate bank accounts for each

benefit payor. There were also many comments which questioned whether the Act and regulations were appropriate, legal, adequately funded or within the expertise of the Department.

RESPONSE: The requirements objected to are required by the statute. For instance, the requirement for audited financial statements is required by N.J.S.A. 17B:27B-2b.(4), the requirement to provide information on benefit payers is required by N.J.S.A. 17B:27B-2b.(6) and the requirement to maintain separate bank accounts for each benefit payor is required by N.J.S.A. 17B:27B-10. N.J.S.A. 17B:27B-25 mandates that the Commissioner adopt rules and regulations to carry out the purposes and provisions of the Act. Therefore, such rules are both legal and appropriate. Further, the legislative mandate places the responsibility for regulation within the Department. As for adequate funding, as stated in the proposal, the Department will seek to mitigate some of its costs by charging reasonable examination fees. However, the Department will monitor its expenses and may seek further action if additional funding is needed.

COMMENT: One commenter requested that third party administrators (TPAs) be permitted to maintain a single claims funding account, separate from the TPA funds and assets, and to individually account for each benefits payer's transactions within the claims funding account, rather than be required to maintain separate bank accounts for each benefits payer. The commenter believes that the cost of establishing, maintaining, and closing individual separate accounts will unnecessarily increase the costs of providing administrative services, and hence, the cost of providing healthcare benefits.

RESPONSE: The requirement to establish separate accounts for each benefits payer is a statutory requirement imposed by N.J.S.A.17B:27B-10 and, as such, cannot be eliminated by regulation.

COMMENT: One commenter supported the Department's efforts to capture information regarding these entities and to regulate their relationships with benefits payers. Specifically they support the requirement at N.J.A.C. 11:23-3.3 that benefits payers not pay the administrator based solely on the number or amount of claims denied or adjusted downward. They believe this has been an egregious practice.

RESPONSE: The Department thanks the commenter for its support.

COMMENT: A commenter requested that the rules clarify that TPAs are serving as a payer's agent and therefore are subject to the same payment regulations as a carrier; specifically, claims that are paid late must be accompanied by 10 percent simple interest.

RESPONSE: The statute does not establish an agency relationship between the payer and the TPA. Therefore, in the absence of any law imposing such a relationship, the nature of their relationship would be governed by the terms of the contract between the parties.

COMMENT: The commenter also requested that a deadline be established by which a benefits payer must provide updated enrollment information to its TPA. Where employers are given long grace periods to provide updated eligibility information, there may be a lag in the time for a payer to learn of a change for one of its members and a patient may have received a number of health services without being covered by the plan. The commenter cited instances of providers calling for authorization prior to providing medically necessary services and being told the patient is still eligible for benefits, but subsequently submitted claims for payment for those services were denied by the TPA.

RESPONSE: The statute does not establish the parameters for the working relationship between the payer and the TPA and no provisions in the proposed new rules imposed such requirements. In the absence of such parameters in the notice of proposal, the additions suggested are beyond the scope of the proposal. The Department will continue to monitor the situation after the codification of these rules and will consider additional rules if the need arises.

COMMENT: A commenter is concerned that N.J.A.C. 11:23-2.3, requiring that the name of the applicant for licensure or registration not so closely resemble the name of an authorized insurer, may be a concern for some of the large insurer/TPAs, as the insurer may not differentiate the name of their TPA. This prohibition is not included in the statute.

RESPONSE: The Department believes that it is confusing and misleading to the consumer to allow any third party to use a name which so closely resembles the name of an authorized insurer that the consumer is not readily able to distinguish the TPA from the insurer.

COMMENT: A commenter states that the statute stipulated that the information required for registration, rather than licensure, would not be unnecessarily duplicative of any information already on file with the Department, but it appears that the requirements for registration under these regulations, since they are lumped together with the requirements for licensure, are in fact duplicative of information that may already be on file with the Department for certain registrants. Another commenter requested that the regulations be modified such that the information required for registration not be duplicative of any information already on file with the Department.

RESPONSE: The statute provides that the information to be filed by TPA applicants not be unnecessarily duplicative of any information already on file with the Department, whether the

applicant is applying for registration or licensure. The Department believes the rules and the application reflect the minimum information required by the Act and therefore are not unnecessarily duplicative. The Department is unable to respond as to any particular requirements, as no specific requirements were addressed in the comments.

COMMENT: A commenter notes that N.J.A.C. 11:23-3.6 requires that any policies, certificates, booklets or other written communications delivered by the benefits payer to the TPA for delivery to enrollees be delivered by the TPA promptly. The commenter believes that this language may be interpreted to suggest the TPA has a greater obligation to provide documents than is the case, and by extension an insurer seems to have greater obligations to provide documents to the TPA. The commenter requested clarification that the regulations do not impose new requirements on insurers to provide information to be distributed by TPAs.

Another commenter felt that such requirements are not necessarily the function of a TPA or a TPA's role as defined in the contract.

Another commenter stated that the rule constituted a specific example of the numerous conflicts between the Act and ERISA guidelines, since ERISA requires that the Summary Plan description be delivered in ninety days, and where there is a conflict ERISA guidelines should apply.

RESPONSE: The language in the regulation reflects the language in the statute, N.J.S.A. 17B:27B-11. The statute and the regulations do not impose the requirement that insurers deliver such items to a TPA, nor provide that distribution of the items is a function of the TPA. However, if the insurer has contracted with the TPA to perform such a function and delivers items to be distributed, they should be delivered promptly. The Department believes that the

language is clear and only refers to any policies, certificates, booklets or other written communications delivered by the benefits payer to the TPA for delivery to enrollees. If the commenter wishes to clarify its role concerning additional documentation it may do so in the contract.

As to conflicts with Employee Retirement Income and Security Act (ERISA), the rules do not impose any standards which exceed or are inconsistent with ERISA. The aforementioned standards and duties are imposed by ERISA on the "plan administrator," the person responsible for administration of the plan. A TPA is an entity that processes and pays claims. While there may be instances where an entity both processes and pays claims and performs the administrative duties for a plan, the functions are not the same. Further, in the example given, the rule and the Act require that documentation be delivered promptly and in accordance with the contract. If there are ERISA standards regarding that delivery, they would apply.

COMMENT: One commenter stated that TPAs can only request a copy of a MEWA registration and therefore will not be able to comply with N.J.A.C. 11:23-3.9.

RESPONSE: While the commenter was correct in its statement at the time it was made, pursuant to N.J.A.C. 11:4-56.3, all self-funded MEWAs operating in this State shall be registered as of September 5, 2004. Therefore, TPAs will be able to comply.

COMMENT: Some commenters believe the regulation underestimates the cost of implementing the accounting changes and the fees associated with the required changes, since private businesses do not typically have audited statements. For ERISA plans, ERISA requires the Plan Sponsor to audit and maintain the accuracy of all financial accounting with regards to their plan

of operation. Another commenter suggested accessing the TPA's tax returns or requesting copies of bonding or errors and omissions insurance in lieu of audited statements.

RESPONSE: N.J.S.A. 17B:17B-2b(4) requires submission of the applicant's most recent financial statement "audited by an independent certified public accountant." Thus the requirement at N.J.A.C. 11:23-3.8(b) that applicants submit such statements is merely reflective of the statutory mandate that would apply regardless of whether it is also codified in these rules. Industry concerns with respect to costs and fees that will be incurred in order to comply with this requirement should, therefore, be addressed to the Legislature.

COMMENT: A commenter notes that some of the requirements in the rules address functions that may not be the function or role of the TPA as defined in the contract, particularly for self-funded plans where the employer is often the administrator and sponsor of the plan.

RESPONSE: As stated above, the functions of a plan administrator and a TPA are not the same, and an entity which is not processing or paying claims is not a TPA and therefore, need not register. Further, an employer who administers his own plan is not a "third party " with regard to that plan. Consequently, a plan administrator would not need to be licensed or registered as a TPA, even if processing or paying claims were part of his functions, if he was doing so only for his own plan. As referenced above, a plan administrator who is not paying or processing claims would not need to be licensed or registered as a TPA.

COMMENT: One commenter stated that " [a] requirement for 'certification' in the proposed State rules must consider the extremity and imprecision of this mandate." The commenter

reasoned that, while there are many legitimate associations and schools offering "certification" to students in medical billing, there are also unreliable companies.

RESPONSE: N.J.S.A. 11:23-5.1 requires that no person shall act as or offer to act as or hold themselves out to be a third party billing service in this State unless certified by the Commissioner in accordance with the Act. There is no requirement in the Act or in the rules that a third party billing service "be certified" by any school or association, prior to applying for certification by the Commissioner.

COMMENT: There were several comments on the use of language in the rules. One commenter believes that the terms "experienced and qualified" as found in the requirement at N.J.A.C. 11:23-5.2(a)5, that "the plan shall include a statement of the third party billing service's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing and recordkeeping" should be defined.

Another commenter believes that the language of N.J.A.C. 11:23-2.3 requiring "adequate financial arrangements" with the benefits payer was too vague.

Another commenter requested that the definition of "third party billing services" should be expanded to include independent contractors in addition to employees and requested the term "subsidiary" be defined.

A commenter requested clarification of "whether the definition of health care provider includes licensed health care facilities."

A commenter requested clarification of the phrase "pertinent statutory and regulation requirements" found in N.J.A.C. 11:23-5.1(b).



RESPONSE: The language in N.J.A.C. 11:23-5.2(a)5 including the terms "experienced and qualified" reflects the statutory language of N.J.S.A. 17B:27B-16e.

The language in N.J.A.C. 11:23-2.3 including the terms "adequate financial arrangements" reflects the statutory language of N.J.S.A. 17B:27B-4. The Department believes that the plain meaning of these terms is sufficiently clear to allow TPA's to understand the minimum requirements necessary.

The definition of "third party billing service" in N.J.A.C. 11:23-1.2 does not include "employees." The commenter seems confused by the concept of "third party." The original two parties in a health billing transaction are the medical provider and the insurer. An employee of the medical provider would not be a "third party" while an independent contractor who is not an employee, affiliate or a subsidiary of either of the original two parties would be a "third party." With the correct understanding and application of the concept of "third party," the Department believes that the plain meaning of the word "subsidiary" is sufficient.

N.J.A.C. 11:23-1.2 and N.J.S.A.17B:27B-1 define a "health care provider" as "an individual or entity which provides a covered benefit or service." Therefore, if a licensed health care facility provides a covered benefit or service it is a "health care provider."

The applicability of N.J.A.C. 11:23-5.1(b) is limited to the first 120 days following the effective date of these regulations for third party billing services already doing business in this State. The phrase "pertinent statutory and regulation requirements" found in N.J.A.C. 11:23-5.1(b) refers to the requirements of the Act, N.J.S.A. 17B:27B-1 et seq., the rules in this chapter and any other statutes or regulations referenced therein, that govern third party billing services at the date of their application

COMMENT: Another commenter objected to the wording of many provisions, questioning the language, the intent and the broadness of the statements used. Specifically, the commenter questioned the use and meaning of "basic organizational documents" in N.J.A.C. 11:23-5.3(a)1, "acceptable standard contract forms" in N.J.A.C. 11:23-5.4(a)4 "reasonable grounds" in N.J.A.C. 11:23-5.5(a) and the broadness of N.J.A.C. 11:23-5.9(a)1.

RESPONSE: All the language and statements referred to by the commenter are an exact reiteration of the statutory language in the Act. The intent of the terms may be discerned from the specific terms used, the context in which they are used, and from the summary contained in the notice of proposal. (see 36 N.J.R. 1297(a)).

COMMENT: The commenter notes that, at N.J.A.C. 11:23-5.4(a)2 the applicant for third party billing service certification must demonstrate that the persons responsible for conducting the applicant's affairs have appropriate experience, training and education. The commenter believes that it may be necessary for the Department to develop standards for educational certification and recommends that the Department consult with practicing third party billing services in developing any educational requirements.

RESPONSE: The Department does not see the need to develop specific standards at this time. The Department notes that the criteria call for a demonstration of experience, training and education. These criteria allow the Department to assess the applicant based on consideration of all these factors. The Department believes that, especially as this is the first time that New Jersey has required certification of third party billing services, there will be, in many cases, an adequate demonstration of ability to conduct the operations of a third party billing service

because the applicant has a successful track record of having done so. Such an applicant might otherwise be disqualified because he does not meet a specific limiting educational requirement.

COMMENT: One commenter pointed out that third party billing services are already required to comply with various requirements of Medicare and Medicaid Service's (CMS ) and the State's Medicaid regulations, as well as the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and other programs. Several commenters stated that the legislation and proposed rules regarding the certification of third party billing services do not represent a rational approach to the obligation of serving the public and demonstrate a lack of understanding of the medical billing industry

RESPONSE: The rules regarding third party billing services require that such services apply for and receive certification from the Department. The rules do not impose any rules or standards with regard to the processing of bills and therefore do not conflict in any way with the CMS, Medicaid or HIPAA statutes and regulations mentioned. Further, any changes to the statutory mandates reiterated in these rules would have to first be enacted by the Legislature and through amendments to N.J.S.A. 17B:27B-1 et seq.

COMMENT: Commenters believe that the regulations, as stated, do not apply to billing companies, as they were written to certify organizations that process claims, and medical billing companies do not process claims. Medical billing companies do not perform fiduciary duties that are common to third party administrators.

RESPONSE: Certain regulations address both third party administrators and others address third party billing services. Both the statute and the regulations acknowledge that these are different

and distinct entities with different duties. N.J.A.C. 11:23-2, 3 and 4 apply only to third party administrators, while Subchapter 5 applies only to third party billing services.

COMMENT: Another commenter objected to the use of the proposed "Biographical Affidavit" for third party billing service applicants.

RESPONSE: In response to the comments received, the Department has amended the biographical affidavit, which can be found on the Department's website, and has reduced the information to be provided. The application for certification as a third party billing service, however, still requires submission of biographical affidavits for the persons responsible for the conduct of the affairs of the applicant. The Department believes that the information is necessary to confirm that the persons responsible for conducting the applicant's affairs are competent, trustworthy, possess good reputations, and have appropriate experience, training and education, as required by N.J.S.A. 17B:27B-18b.

COMMENT: Commenters asked whether a company that engages in the business of receiving completed claims on behalf of insurers and that serves to remove original prices submitted by the provider and substitute contracted prices, is a third party billing service.

Similarly, commenters asked whether a billing company should be defined by the services it provides, and if so, what services would qualify or disqualify a company as a third party billing service. As an example, would a collection agency that finds it necessary to submit bills for a healthcare client when collection efforts reveal "new" insurance coverage be acting as a third party billing service? Would a subcontractor that performs a specific task, such as service

and/or diagnosis coding, electronic claims submission, data entry, shared computer software vendors or monthly statement billing and mailing be subject to certification requirements?

Several commenters suggested alternative criteria to determine which entities would be subject to certification as third party billing services, such as number of employees or revenue.

RESPONSE: A company is a third party billing service if the statutory definition of "third party billing service," found at N.J.S.A. 17B:27B-1, applies. That definition is: "a person or entity that is paid by a health care provider to process claims or claims payments on behalf of the health care provider." Therefore, as long as the entity is not paid by the health care provider to process claims or claims payments, they are not statutorily defined as a "third party billing service." If, however, an entity is paid to process claims for the health care provider, regardless of any other services that company may provide, it would fall within the definition of a "third party billing service." Limiting criteria such as those suggested in the comments would require changes to the Act.

COMMENT: Commenters asked whether an individual practice that formed a subsidiary to perform medical billing for itself, with no other customers, is subject to the rules if the subsidiary performs other services, such as management of pension and benefit programs. They also asked if a hospital or medical school that operated a subsidiary billing organization for the hospital, members of staff, ambulance program, home health business, clinical laboratory, etc. would be subject to the rules.

RESPONSE: The definition of "third party billing service" in N.J.A.C. 11:23-2.2 excludes any employee, affiliate or subsidiary of the health care provider. Therefore, a subsidiary such as was described in the comment would not be subject to the rules.

COMMENT: Commenters believe that the requirements of the rules will impose substantial costs and hardship upon small businesses. They specifically mention the cost of engaging a CPA firm to produce audited financial statements. They also question the reasonableness of requiring a small business to produce a written business plan when very few billing companies have a written business plan and then subjecting the company to audit of compliance with a business plan.

RESPONSE: The requirements objected to are specifically imposed by N.J.S.A. 17B:27B-16.

COMMENT: Some commenters objected to the requirement that third party billing services file a client list, stating that the information is "the most sensitive, confidential and proprietary information, not only for the billing service, but also for the practices it serves." They also objected to the further requirement that changes in the client list also be reported. They recommended that the rules be amended to specify that any client list filed be subject to applicable State confidentiality protection; be submitted no more than annually; be submitted electronically and that the categories of clients subject to listing be clarified.

RESPONSE: The Department acknowledges that client lists are "sensitive, confidential and proprietary information." The submission of the client list with the application is required by N.J.S.A. 17B:27B-16f . However, N.J.S.A. 17B:27B-7 requires that proprietary information be kept confidential.

While one commenter believed that there is an implied requirement that changes in the client list also be reported, there is no such requirement. Third party billing services are only

required to submit material changes in ownership or control or facts and circumstances affecting its qualifications for certification.

COMMENT: One commenter requested clarification that if "the third party billing service's acceptance of monies from benefit payers are deposited directly in an account controlled by the health care provider, that there is no requirement for such an applicant for certification to provide its most recent financial statement audited by an independent certified public accountant."

RESPONSE: N.J.S.A. 17B:27B-16d requires applicants for certification that accept monies to provide such statements. There is no statutory differentiation predicated on where or to whose account those monies are deposited. Consequently, all applicants who accept monies must provide financial statements.

COMMENT: Some commenters objected to the requirement that the written contract between the third party billing service and the client contain provisions concerning the responsibility of the third party billing service with respect to the maintenance of appropriate insurance coverage by the third party billing service against the risk of loss. The commenters stated that, while their members acknowledged the desirability of errors and omission coverage, most without it cite cost as the primary reason for not securing it, as the only coverage available is \$1 million for a monthly premium of approximately \$600.00. The commenters, while recognizing that the rule was a direct reflection of the legislation, recommended that the rule be amended to "allow applicants to attest to the absence of the required coverage for the company."

RESPONSE: As acknowledged by the commenters, the rule reflects the statutory requirement imposed by N.J.S.A. 17B:27B-20, which cannot be changed by regulation.

COMMENT: Some commenters stated that they did not believe that New Jersey has the authority to impose certification requirements on businesses that are not located in New Jersey. The commenters recommended that any final regulations include the citation of the relevant statutes that support imposition of certification on out-of State companies and the basis of the obligations to apply for certification.

RESPONSE: The State of New Jersey does not impose any certification requirements on companies that are not located in New Jersey unless that company is doing business in New Jersey. Pursuant to N.J.S.A. 17B:27B-16, such companies are required to be certified.

COMMENT: Some commenters proposed their own applications and procedures for certification of the third party billing services, stating that they believed that the data requested on their form provided New Jersey with sufficient information to allow the State to fulfill its legislative obligations.

RESPONSE: The Department thanks the commenters for their recommendations. However, N.J.S.A. 17B:27B-16 requires that applications for certification be made on a form provided by the Commissioner.

### **Federal Standards Statement**

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



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

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 licensed, registration or certification issued by the Department for a limited period following **[the effective date of this chapter]** **April 14, 2005** which allows third party administrators of third party billing services operating in this State prior to **[the effective date of this chapter]** **April 14, 2005** to continue operating during the initial application process.

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 the **[effective date of this chapter]** **April 14, 2005** shall file an application for temporary initial licensure or registration **[within 90 days of the effective date of this chapter]** **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](http://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) Except for those who apply for temporary initial licenses or registration \*[within 90 days of the effective date of this chapter]\* **by July 3, 2005**\* all third party administrators subject to licensure or registration shall obtain licensure or registration prior to operating in this State.

(c) - (d) (No change from proposal.)

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

(a) No person shall act as, offer to act as or hold himself or herself out to be a third party billing service in this State unless certified by the Commissioner in accordance with the Act.

(b) Any third party billing service operating in this State prior to \*[the effective date of this chapter]\* **April 14, 2005**\* shall file with the Department an application for temporary initial certification \*[within 120 days of the effective date of this chapter]\* **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](http://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) Except for those who apply for a temporary initial certification \*[within 120 days of the effective date of this chapter]\* **by August 2, 2005** all third party billing services shall obtain certification prior to operating in this State.

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