

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

Dental Services

Proposed Readoption: N.J.A.C. 11:10

Authorized By: Donald Bryan, Acting Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15(e), 17:48D-1 et seq., 17B:26-44.4 et seq., 17:48C-18.1 et seq. and 17B:27-51.10a et seq.

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

Proposal Number: PRN 2005-321

Submit comments by November 5, 2005 to:

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The agency proposal follows:

Summary

Pursuant to the sunset provisions of N.J.S.A. 52:14B-5.1, the Department of Banking and Insurance (Department) proposes to readopt N.J.A.C. 11:10, Dental Services, scheduled to expire on February 17, 2006.

Subchapter 1 of N.J.A.C. 11:10 implements the Dental Plan Organization Act (N.J.S.A. 17:48D-1 et seq.) (the "Act"), which regulates persons and corporations

offering plans for the prepayment or postpayment of dental services. The Act provides for the licensing and supervision of dental plan organizations (DPOs) to protect enrollees of the plans and to assure that the services contracted for are actually delivered.

Subchapter 1 sets forth certain standards and procedures designed to effectuate the purposes of the Act. The rules at subchapter 1 contain requirements for a DPO to obtain and maintain a certificate of authority, including criteria for written agreements with dentists and for evidence of coverage and group contract forms; financial reporting; general surplus, expense limitation and fidelity bond and malpractice insurance requirements; enrollee complaint procedures; and standards for schedules of charges.

Subchapter 2 of N.J.A.C. 11:10 implements 1983 amendments to the Act that prohibited employers from requiring employees to use the services of dentists selected by them ("closed panel" dental plan arrangements), and to permit selection of an alternative form of dental care. The rules contain notification requirements concerning alternative dental care aimed at employers and the health insurers, DPOs and dental service corporations that issue dental plans.

P.L. 2005, c. 38, was approved March 7, 2005, and made several amendments to the Act, all of which were effective on that date. Generally, the amendments update many of the Act's provisions and subject DPOs to the same level of oversight by the Department as other types of health insurers. More specifically, the amendments include permitting DPOs to compensate contracted dentists by means other than

capitation; removing, with certain exceptions, the \$1,000 cap that the Department may assess a DPO for performing a financial condition examination; revising the maximum administrative expense ratio to a minimum medical loss ratio; permitting the assessment of civil monetary penalties for a DPO's failure to file an annual report or timely respond to Department inquiries; eliminating the DPO certificate of authority renewal requirement; and increasing the DPO records retention requirement from three to seven years. These revisions to the Act will necessitate the Department's proposing several amendments to Subchapter 1 of Chapter 10. Due to the nature and extent of these amendments, however, the Department has chosen not to include them in this proposed chapter readoption, but instead to propose for readoption the current Subchapters 1 and 2 without amendment. The Department intends to separately propose amendments implementing P.L. 2005, c. 38, and additional amendments, at a later date. In the interim, the Department has reviewed the rules at N.J.A.C. 11:10 and determined that they continue to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

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 rules proposed for readoption will continue to have a favorable impact on consumers. Readoption of the existing rules will ensure that the protections they afford

the consuming public will continue. These rules have established a system of oversight of DPOs that continually monitors their financial arrangements and practices, as well as their provision of dental care services. The existing rules also provide certain protections to consumers concerning alternative dental coverage.

Readoption of these rules will also have a favorable impact on DPOs in that they will serve to ensure that DPOs intending to continue operating maintain the high standards required by these rules, including those addressing eligibility for obtaining a certificate of authority, agreements with dentists, and financial requirements.

Economic Impact

The rules proposed for readoption will continue to impose certain financial and reporting requirements on DPOs, some of which have been in place since these rules were originally promulgated, and others that were subsequently adopted, including financial reporting and surplus requirements. The Department does not believe, however, that the cost associated with these requirements will necessarily have an unfavorable impact on DPOs. Rather, the costs are a necessary part of doing business in this State in order that the Department may continue its regulatory oversight of DPOs to further ensure their financial solvency and eliminate any fraud or abuse that may exist.

Dentists entering into agreements with DPO's to provide dental services will continue to experience a favorable economic impact from the proposed readoption of

this chapter's existing rules, including those addressing written agreements with dentists and the DPO's financial reporting and surplus requirements.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption are not subject to any Federal requirements.

Jobs Impact

The Department does not anticipate that the rules proposed for readoption will result in the generation or loss of jobs.

Agriculture Industry Impact

Pursuant to N.J.S.A. 4:1C-10.3, the Right to Farm Act, and N.J.S.A. 52:14B-4(a)(2) of the Administrative Procedure Act, the Department does not expect any impact on the agriculture industry from the rules proposed for readoption.

Regulatory Flexibility Analysis

Some of the DPOs presently authorized to operate in New Jersey and which are affected by the rules proposed for readoption may be small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The current rules impose certain reporting and recordkeeping requirements on DPOs that will continue after readoption, including the submission of applications to obtain a certificate of

authority, quarterly financial reports, filing all written agreements with dentists, all applications for approval of specialist pools, and all annual audited financial reports requiring the services of an independent certified public accountant or independent public accountant. Costs are discussed in the Economic Impact above.

These requirements are imposed on all DPOs subject to this chapter, however, because the requirements are necessary to carry out the purposes of the Act (that is, to protect consumers and prevent fraud and abuse within the marketplace). As such, there can be no exemptions or lesser requirements for small businesses.

Smart Growth Impact

The rules proposed for readoption have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:10.

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