

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF INSURANCE

Personal Injury Protection Benefits; Medical Protocols; Diagnostic Tests  
Deductibles and Co-pays

Proposed Amendment: N.J.A.C. 11:3-4.4

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 39:6A-4.

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

Proposal Number: PRN 2007-304

Submit written comments by November 30, 2007 to:

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The agency proposal follows:

Summary

In June, 2004, the Department of Banking and Insurance (Department) adopted amendments to N.J.A.C. 11:3-4, Personal Injury Protection Benefits; Medical Protocols; Diagnostic Tests. As part of that rulemaking, the Department added N.J.A.C. 11:3-4.4(g), to address the order in which the various deductibles and co-payments under Personal Injury Protection (PIP) benefits provided pursuant to N.J.A.C. 11:3-4.4 should be applied. Subsection (g) established that penalty co-payments for: failures to follow Decision Point Review and pre-

certification requirements (N.J.A.C. 11:3-4.4(d), failures to provide required notification about a claim (N.J.A.C. 11:3-4.4(e)), or failures to use a voluntary network (N.J.A.C. 11:3-4.4(f)) should be applied after the application of the standard PIP deductible and co-payment as selected by the insured pursuant to N.J.A.C. 11:3-4.4(a) and (b) (standard PIP deductible and co-payment).

Both the comments to the proposed rules and subsequent inquiries indicated that some insurers needed additional time to change their systems to comply with the provision. In September, 2004, the Department issued Bulletin 04-19, which extended the time period to implement N.J.A.C. 11:3-4.4(g) for 180 days. During that period, the Department received information from several insurers indicating that it would be extremely difficult and expensive to change their systems to comply with the rule.

Upon review, the Department determined that the methodology in subsection (g), which mandated that the penalty co-payments be applied after the standard PIP deductible and co-payment, was not necessarily more appropriate than applying them in the reverse order. There was no overriding regulatory purpose to requiring that insurers make extensive and expensive programming changes to change the order in which the penalty co-payments and the standard co-payments and deductibles were applied. The Department decided to amend the rule to remove the requirement that penalty co-payments and standard deductibles and co-payments be applied in a specified order, and intended to make this amendment to the rule prior to the end of the 180-day extension of the operative date of the rule. However, other regulatory priorities intervened and it was not possible to make the change before the end of the 180-day period. The Department now proposes this change.

N.J.A.C. 11:3-4.4(g) is proposed to be amended to permit insurers to apply the penalty co-payments and standard co-payments and deductibles in N.J.A.C. 11:3-4.4(a) through (f) in

any order, provided that it is done consistently for all insureds. The proposed amendment also provides that insurers should make information available to insureds and providers on how it applies the penalty co-payments and standard co-payments and deductibles when a claim for PIP benefits is made.

This rule proposal provides for a comment period of 60 days and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

#### Social Impact

The proposed amendment will provide additional flexibility to insurers in the application of penalty co-payments that may be imposed pursuant to N.J.A.C. 11:3-4.4. This will avoid additional costs to effected insurers. Moreover, allowing flexibility in application of PIP deductibles has little or no concomitant benefit to insureds or providers other than the ability to avoid extensive programming changes and the related costs, which would ultimately be borne by policyholders. Accordingly, the proposed amendment should benefit insureds as well as insurers.

#### Economic Impact

As noted above, the proposed amendment will provide additional flexibility to insurers in developing systems to apply co-payments pursuant to N.J.A.C. 11:3-4.4, avoiding the potential costs involved in restructuring existing systems that would otherwise be required, which costs are ultimately borne by policyholders. Accordingly, both insurers and policyholders should benefit. There is a potential variation in the amount of co-payments that may be imposed

pursuant to N.J.A.C. 11:3-4.4(c) through (e) depending on the order the co-payments are imposed and whether the statutory deductible and co-payment amounts have been met. The Department believes that any such variation should be minimal.

#### Federal Standards Statement

A Federal standards analysis is not required because the proposed amendment is not subject to any Federal requirements or standards.

#### Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed amendment.

The Department invites commenters to submit any data or studies regarding the jobs impact of this proposal together with any written comments on other aspect of this proposal.

#### Agricultural Industry Impact

The proposed amendment will not have any impact on the agriculture industry in New Jersey.

#### Regulatory Flexibility Analysis

The Department's proposed amendment will apply to "small businesses," as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These "small businesses" are insurance companies domiciled in New Jersey authorized to write private passenger automobile insurance and/or motor bus medical expense coverage.

The proposed amendment provides flexibility to insurers on how to apply PIP co-payments and deductibles. The Department does not believe that the requirements set forth in the proposed amendment impose any undue burden on insurers. The amendment deletes a provision that would have forced some insurers to make expensive programming changes, but does require insurers to apply the methodology consistently and to provide a copy of the methodology to the insured and provider upon request. These requirements should impose little or no additional burden on insurers. No professional services will be needed in order to comply. The proposed amendment relates to the imposition of penalty co-payments under N.J.A.C. 11:3-4.4, which does not vary based on insurer size. Accordingly, the proposed amendment provides no different reporting, recordkeeping or other compliance requirements based on insurer size.

#### Smart Growth Impact

The proposed amendment will not have any impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

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

## 11:3-4.4 Deductibles and co-pays

(a) - (f) (No change)

(g) For the purpose of the co-payments permitted in (d), (e) and (f) above, the percentage reduction shall be applied to the amount that the insurer would otherwise have paid to the insured or the provider after the application of the provisions of N.J.A.C. 11:3-29. [Such amount may have already been reduced by the application of the co-payments and/or deductibles in (a) and (b) above.] **Insurers may apply the co-payments and deductibles in (a) through (f) above in any order, provided that they use the same methodology consistently for all insureds. Upon receipt of a request for PIP benefits under the policy, the insurer or its PIP vendor shall make its co-payment and deductible application methodology available to the insured and the treating medical provider upon request.**

(h) (No change.)