

**INSURANCE**

**DEPARTMENT OF BANKING AND INSURANCE**

**DIVISION OF INSURANCE**

**Organized Delivery Systems**

**Proposed Amendments: N.J.A.C. 11:22-4.1, 4.2, 4.3, 4.4, and 4.8**

**Proposed Repeals: N.J.A.C. 11:22-4 Appendix Exhibits A and C**

Authorized By: Kenneth E. Kobylowski, Commissioner,

Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1 and 15.e and 17:48H-1 et seq.

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

Proposal Number: PRN 2014-127.

Submit comments by October 3, 2014, to:

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**Summary**

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.

On August 1, 2005, the responsibility for the certification and regulation of entities subject to the Organized Delivery System Act, N.J.S.A 17:48H-1 et seq. was transferred from the Department of Health and Senior Services (DHSS), (now the Department of Health) to the Department of Banking and Insurance (Department) by Acting Governor Richard J. Codey by Reorganization Plan No. 005-2005, A Plan to Provide for the Transfer, Consolidation and Reorganization of the Office of Managed Care from the Department of Health and Senior Services to the Department of Banking and Insurance, 37 N.J.R. 2737(a).

A proposed amendment revises a reference in N.J.A.C. 11:22-4.1(b) to Exhibit B of N.J.A.C. 11:22-4 Appendix to continue to refer to that Exhibit, which is being recodified as Exhibit A due to the proposed repeal of current Exhibit A. Another amendment, to the definition of “certified organized delivery system” in N.J.A.C. 11:22-4.2, deletes a reference to the DHSS in N.J.A.C. 11:22-4.2 and replaces it with a reference to the Department.

An amendment to N.J.A.C. 11:22-4.3(a)1 is proposed to have the paragraph state that the subchapter applies to contracts for the services of an organized delivery service (ODS) issued or renewed after October 21, 2002. A portion of N.J.A.C. 11:22-4.3(a)1 is proposed for deletion, as the text being deleted was a transitional provision which was relevant from October 21, 2002 until October 21, 2004.

N.J.A.C. 11:22-4.3(b) is proposed for amendment to remove the reference to Exhibit A in the Appendix, which contains a copy of the application form for an exemption from the ODS licensure requirement, and to replace it with the web address at which the form can be found. The same change is proposed for N.J.A.C. 11:22-4.4(a) with respect to the reference to Exhibit A for use of the application form for licensure as an ODS. Proposed new N.J.A.C. 11:22-4.4(a)1 provides that the licensure and exemption from licensure application forms posted on the website shall include: instructions; checklist of documents; cover sheet; consent to jurisdiction of the Commissioner; appointment of Commissioner for service of process; biographical affidavits for all persons responsible for the conduct of the applicant; audited financial statements; the applicant's financial plan; and list(s) of participating providers. The current second sentence in N.J.A.C. 11:22-4.4(a) is proposed for recodification as N.J.A.C. 11:22-4.4(b), and current subsection (b) is recodified as subsection (c) with an amendment to cross-reference recodified paragraph (b)1.

N.J.A.C. 11:22-4.8(d) is proposed for amendment to make several grammatical changes to clarify the text of the subsection and to remove the reference to Exhibit C in the Appendix. Organized delivery systems are required by N.J.A.C. 11:22-4.8(b) to maintain a segregated account and to give prior notice of requests to withdraw funds from the segregated account by N.J.A.C. 11:22-4.8(d). Most ODSs are also required to give such notice under N.J.A.C. 11:1-35.10. Therefore, the requirement to give written notice in N.J.A.C. 11:22-4.8(d) on the form found in Exhibit C is proposed for deletion. The general requirement to give written notice has been retained as, while it has not yet been

the case, it is possible for an ODS to exist that is not obligated to report under N.J.A.C. 11:1-35.10.

Lastly, Exhibits A and C in the Appendix are proposed for repeal as discussed above.

### **Social Impact**

The intent of Reorganization Plan No. 005 in 2005 was to group, coordinate, and consolidate similar functions in a more consistent and practical manner and eliminate overlapping and duplication of functions. See 37 N.J.R. 2738. This reorganization, which has already occurred, has reduced paperwork for the Executive Branch as intended. The consolidation of the functions within one department has served to streamline applications and reporting processes for the businesses governed by N.J.S.A. 17:48H-1 et seq.

The deletion of Exhibits A and C in N.J.A.C. 11:22-4 also serves the purposes of coordinating and consolidating functions in a more practical manner. By replacing Exhibit A with the available on-line forms, the proposed amendment enables businesses to easily access, duplicate, and utilize the necessary forms. Further, removing Exhibit C allows those companies that must also comply with the reporting requirements of N.J.A.C. 11:1-35.10 to use a single form, further eliminating overlap and duplication.

Thus, these amendments and the deletion of the now obsolete text in the rules will have a beneficial social impact upon ODS licensees, and on applicants for licenses and exemptions.

### **Economic Impact**

Most of the proposed amendments remove obsolete references from the affected rules, and will therefore have no economic impact. Further, the Department believes that the elimination of redundant paperwork effectuated by the amendments to N.J.A.C. 11:22-4.8(c) will have a positive economic effect on both ODSs and the Department by reducing costs associated with the completion and submission of the form in Appendix C proposed for repeal.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed amendments and repeals are not subject to any Federal requirements or standards.

### **Jobs Impact**

The proposed amendments and repeals should not have any impact on jobs. While the elimination of some redundant paperwork should lessen the current clerical burden on ODSs, any services currently utilized by the ODS such as actuarial, accounting, or legal services will be unaffected by the proposed amendments and repeals. ODSs will continue to utilize in-house staff or seek these services from the outside. The Department invites the submission of any data or studies on the potential jobs impact of the proposed amendments and repeals.

### **Agriculture Industry Impact**

The proposed amendments and repeals will not have any impact on the agriculture industry in New Jersey.

### **Regulatory Flexibility Statement**

The proposed amendments and repeals may apply to “small businesses” as some ODSs may employ fewer than 100 full-time employees and, therefore, are “small businesses” as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the proposed amendments and repeals do not impose any additional reporting, recordkeeping, or other compliance requirements on ODSs. The proposed amendments and repeals delete outdated language, clarify existing requirements, and facilitate the use of forms in complying with existing requirements.

The proposed amendments and repeals continue to provide a framework pursuant to N.J.S.A. 17:48H-1 et seq. to ensure that ODSs possess the financial strength and ability to fulfill their contractual obligations to avoid significant disruptions to insureds, subscribers, providers, carriers, and the market in general, that may result from the insolvency or inability of such an entity to fulfill its obligations.

### **Housing Affordability Impact Analysis**

The proposed amendments and repeals will have no impact on affordable housing in New Jersey or the average costs associated with housing because the proposed amendments and repeals concern requirements for the licensing of organized delivery systems.

### **Smart Growth Development Impact Analysis**

The rules proposed for amendments and repeals will have no impact on smart growth and or housing production in Planning Areas 1 or 2 or within designated centers

under State Development and Redevelopment Plan in New Jersey because the amendments and repeals concern requirements for licensing of organized delivery systems.

**Full text** of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:22-4 Appendix, Exhibits A and C.

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

#### SUBCHAPTER 4. ORGANIZED DELIVERY SYSTEMS

##### 11:22-4.1 Purpose and scope

- (a) (No change.)
- (b) This subchapter applies to any entity seeking to become licensed as an organized delivery system pursuant to N.J.S.A. 17:48H-1 et seq.; or an existing organized delivery system required to obtain a license to operate pursuant to N.J.S.A. 17:48H-11. A non-exhaustive list of examples of entities and arrangements that are subject to these rules is set forth in Exhibit [B] **A** in the Appendix to this subchapter, incorporated herein by reference.

##### 11:22-4.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

"Certified organized delivery system" means an organized delivery system that is compensated on a basis which does not entail the assumption of more than de minimis financial risk by the organized delivery system and that is certified by the [DHSS] **Department** in accordance with N.J.S.A. 17:48H-1 et seq.

...

#### 11:22-4.3 License requirement

(a) An organized delivery system that receives compensation on a basis that entails the assumption of financial risk shall submit an application for licensure to the Commissioner.

1. This subchapter shall apply to any contract **issued and/or** renewed on or after October 21, 2002. [Notwithstanding the obligations imposed by N.J.S.A. 17:48H-1 et seq. and this subchapter regarding licensure requirements, nothing in this subsection shall operate to impair any contract in force as of October 21, 2002 for a period not to exceed 24 months.]

(b) An organized delivery system that receives compensation on a basis that entails the assumption of financial risk, but meets the criteria set forth in this subsection, may apply to the Commissioner for an exemption from the licensure requirements based on the system's current contractual arrangements. Any organized delivery system seeking an [application for] exemption shall file **an application in the format and containing** the information set forth [in Exhibit A in the Appendix to this subchapter, incorporated herein by reference,] **at** [www.state.nj.us/dobi/division\\_insurance/managedcare/mcapps.htm](http://www.state.nj.us/dobi/division_insurance/managedcare/mcapps.htm), as described in



**N.J.A.C. 11:22-4.4(a)1**, with a non-refundable filing fee in the amount of \$1,000, payable to the Treasurer, State of New Jersey.

1. - 2. (No change.)

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

#### 11:22-4.4 Application procedures

(a) An application for a license to operate an organized delivery system shall be filed with the Commissioner, and shall contain a completed application, containing the information and in the format set forth [in Exhibit A in the Appendix to this subchapter, incorporated herein by reference] at [www.state.nj.us/dobi/division\\_insurance/managedcare/mcapps.htm](http://www.state.nj.us/dobi/division_insurance/managedcare/mcapps.htm).

**1. The licensure and exemption from licensure application forms posted on the website request identifying and contact information on the applicant, a description of the services the applicant will provide, and, if an exemption is sought, an explanation of why an exemption is appropriate. The application shall also include:**

**i. Instructions; checklist of documents; cover sheet; consent to jurisdiction of the Commissioner; appointment of Commissioner for service of process; biographical affidavits for all persons responsible for the conduct of the applicant; audited financial statements; the applicant's financial plan; and list(s) of participating providers.**

(b) [In addition, the] **The** application shall be accompanied by:

1. - 2. (No change.)

[(b)] (c) In addition to the [filing] **application** fee set forth in [(a)2] **(b)1** above, the applicant shall be assessed and shall pay on demand the amount necessary to reimburse the Department for expenses incurred in obtaining a risk assessment report on the applicant from a rating agency determined to be acceptable by the Commissioner.

11:22-4.8 Net worth, deposits, and bond

(a) - (c) (No change.)

(d) Except for payment of benefits under the contract[, ] including attendant administrative expenses, **a licensed organized delivery system shall obtain the prior non-disapproval of the Commissioner to withdraw** funds [in] **from** the segregated account[, which] **in all cases where the fair market value of the funds to be withdrawn,** together with that of other amounts withdrawn from the segregated account within the immediately preceding 12 months, [that] exceeds 10 percent of the total net worth of the segregated account as of December 31 immediately preceding[, shall not be withdrawn except upon 45 days prior]. **Prior** written notice [to] **of the intent to withdraw shall be filed with** the Commissioner **at least 45 days before the withdrawal,** and **if** the withdrawal has not been disapproved prior to the expiration of the 45-day period, **then the organized delivery system may proceed to make the withdrawal.** [Notice of intent to withdraw monies shall contain the information and be in the format of Exhibit C in the Appendix to this subchapter, incorporated herein by reference.] In no event may the net worth of the segregated account fall below the minimum net worth requirement set forth in (a) above.

(e) - (k) (No change.)

APPENDIX

EXHIBIT [B] A

(No change in text.)