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BULLETIN NO. 05-28

**TO: ALL NEW JERSEY HEALTH INSURANCE COMPANIES,
HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE
CORPORATIONS, HEALTH SERVICE CORPORATIONS,
HEALTH MAINTENANCE ORGANIZATIONS,
ORGANIZED DELIVERY SYSTEMS, AND OTHER INTERESTED
PARTIES**

FROM: DONALD BRYAN, ACTING COMMISSIONER

**RE: PAY FOR PERFORMANCE AND OTHER BONUS/PENALTY
PROGRAMS**

It has recently come to the attention of the Department of Banking and Insurance (DOBI) that some carriers offering health benefits plans subject to N.J.S.A. 26:2S-1 et seq., are incorporating various bonuses or penalties, or both, into their methods of compensation to health care providers based on measurements of demonstrated provider quality and/or efficiency in the provision of health care services (i.e., pay for performance programs). The purpose of this Bulletin is to remind carriers that several statutes and rules are directly applicable to such compensation arrangements.

- Pursuant to N.J.S.A. 26:2S-9b and 6a, such programs may not include financial incentives or disincentives that cause health care providers to withhold covered health care services that are medically necessary, based on generally accepted standards of health care practice.
- Pursuant to N.J.A.C. 8:38-15.2(b)5, N.J.A.C. 8:38A-4.15(b)5, and N.J.A.C. 8:38B-5.2(a)4, the compensation methodology must be contained in provider contracts.
- In accordance with N.J.A.C. 8:38-15.3(a), N.J.A.C. 8:38A-4.15(f), and N.J.A.C. 8:38B-5.10(b) the provider contract forms are required to be filed by or with DOBI.¹

¹ Forms of provider agreements were formerly submitted for filing by the Department of Health and Senior Services, although DOBI often participated in the review in consultation with the Department of Health and Senior Services. In accordance with Reorganization Plan 005-2005, the responsibilities of the Department of Health and Senior Services regarding regulation of HMOs and other managed care organizations or products were transferred to DOBI. For more information regarding the transfer, refer to DOBI Bulletin

N.J.A.C. 8:38-15.2(b)5 (applicable to HMOs), N.J.A.C. 8:38A-4.15(b)5 (applicable to insurance companies and health, hospital and medical service corporations), and N.J.A.C. 8:38B-5.2(a)4 (applicable to ODSs), all require that provider contracts specify the method of reimbursement to the health care provider, including the method and timing of application of any penalties, bonuses or other types of compensation arrangements.

Further, N.J.A.C. 8:38-15.3(a), N.J.A.C. 8:38A-4.15(f), and N.J.A.C. 8:38B-5.10(b), as well as N.J.S.A. 17:48E-10a, require that forms of provider agreements be filed with or by DOBI prior to being used by a carrier or ODS. If a carrier elects to amend the provisions of a previously filed contract form, the amendments must also be filed by or with DOBI prior to use. N.J.S.A. 17:48E-10a also obligates health service corporations to file their participating physician agreements with the Department, and N.J.S.A. 26:2J-3 and 19 require HMOs to obtain Department approval of forms of provider agreements prior to use.

The terms of the pay for performance program set forth in the provider contract are required to include a description of: the quality and/or cost efficiency measures that will be used, and the frequency with which measurements will be made; the amounts of compensation that may be paid as bonuses or withheld as penalties based on such measures; opportunities for providers to review performance data for accuracy; and, the process by which a provider may appeal a decision denying the provider a bonus or imposing a penalty on the provider based on the pay for performance measures.

Based upon the foregoing authorities, carriers and ODSs are advised that they may not use pay for performance programs until the provider contract forms, or amendments or endorsements thereto, that specify the terms of the pay for performance programs in the manner set forth above are submitted to and approved by DOBI. DOBI will disapprove any pay for performance program that results in financial incentives for health care providers to withhold covered health care services that are medically necessary as determined in accordance with generally accepted standards of health care practice.

Any questions regarding the information in this Bulletin and the impact of the Act may be addressed to DOBI's Office of Life and Health by FAX (609-633-0527). Please identify all questions as being related to Bulletin 05-28.

12/15/05
Date

/s/ Donald Bryan
Donald Bryan
Acting Commissioner

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