

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF INSURANCE

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

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

Proposed: October 1, 2007 at 39 N.J.R. 4056(a)

Adopted: January 31, 2008 by Steven M. Goldman, Commissioner, Department of  
Banking and Insurance

Filed: February 1, 2008 as R. 2008 d.46, with a substantive change not requiring  
additional public notice and comment (see N.J.A.C. 1:30-6.3).

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

Effective Date: March 3, 2008

Expiration Date: June 7, 2011

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) timely received two written  
comments from the following:

1. A joint comment from State Farm Indemnity Company and State Farm Guaranty  
Insurance Company; and
2. Allstate New Jersey Insurance Company.

COMMENT: One commenter expressly supported the proposed amendment to N.J.A.C. 11:3-  
4.4(g). The commenter stated that the proposed amendment will provide insurers with flexibility  
in their personal injury protection (PIP) programming and procedures for applying deductibles  
and co-pays, while protecting insureds with the requirements that the insurers use the same  
methodology for all insureds.

RESPONSE: The Department appreciates the support of its proposal.

COMMENT: One commenter, while it generally supported the proposed amendment similar to the comment above, believed that the Department should define the word “methodology” as it is used in the proposed amendment to properly implement the rule. The commenter stated that once that word is better explained or defined, it will eliminate ambiguous language in both insurer policies and decision point review plans. The commenter noted that the proposed amendment requires that insurers may apply the co-payments and deductibles in any order, provided that they use the same methodology consistently for all insureds. The commenter stated that the rule fails to explain what “methodology” triggers the penalty, or how an insurer would apply payment (in order of penalties) and what penalties may apply. If the word “methodology” refers only to the order of application of any of the co-payments and deductibles in N.J.A.C. 11:3-4.4(a) through (f), the commenter suggested that the rule be clarified by deleting the word “methodology” and replacing it with the words “order of application.” However, the commenter stated that it would have concerns if the word “methodology” means the circumstances in which each penalty would be applied. The commenter stated that, historically, co-payments or deductibles may not have been applied “consistently for all insureds” since an insurer likely utilizes its discretion as to whether a co-payment or deductible should be applied at all. The commenter believed that the requirement to use them “consistently for all insureds” eliminates an insurer’s discretion as to whether to impose a penalty in a particular case.

The commenter also suggested the Department clarify whether the methodology utilized by an insurer must be added to its current decision point review plan. The commenter believed

that providing the methodology information only on an insurer's website would be in compliance with the proposed rule as it relates to notification to claimants and providers. If this would not be in compliance, the commenter stated that the second sentence of the proposed amendment could place an undue burden on the insurer to respond to any request for methodology information with paper documentation. The commenter stated that a provider's counsel could submit a request for paper documentation of the "co-payment and deductible application methodology" with every request for PIP benefits. The commenter believed that responding to each of these requests with paper documentation would be burdensome and oppressive.

RESPONSE: Initially, while the Department does not agree with the commenter that the word "methodology" as used in the rule makes the rule ambiguous or could be construed to mean something other than the order in which deductibles and co-payments are applied, to avoid any possible confusion the Department will change the rule upon adoption to substitute the phrase "order of application" for "methodology consistently" in N.J.A.C. 11:3-4.4(g). Accordingly, the second sentence of subsection (g) will read as follows "Insurers may apply the co-payments and deductibles in (a) through (f) above in any order, provided that they use the same order of application for all insureds." This change also addresses the commenter's concern that the adopted amendments could be interpreted to eliminate an insurer's discretion not to impose a penalty co-payment. As noted above, the rule simply addresses the order in which deductibles and co-payments are applied. Insurers are free to use their discretion to waive penalty co-payments. The summary of the notice of proposal of this amendment contains repeated references to the Department's intention that the proposed amendment would address the order

in which deductibles and co-payments are to be applied. Consequently, pursuant to N.J.A.C. 17:30-6.3(c) this change is not so substantial as to require republication.

With respect to concerns about providing paper documentation of the co-payment and deductible order of application (“methodology”), the Department believes that adding information about the order in which deductibles and co-payments are applied to the information supplied by the insurer to the provider in an insurer’s decision point review plan would meet the notification requirements of the adopted amendments. Further, providing the information on the insurer’s website would also meet the requirement.

#### Federal Standards Statement

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

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks

**\*thus\***; deletion from proposal indicated in brackets with asterisks \*[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. Insurers may apply the co-payments and deductibles in (a) through (f) above in any order, provided that they use the same \*[methodology consistently]\* **order of application** 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.)

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