

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

Third Party Administrators

Adopted Amendments: N.J.A.C. 11:23-1.2, 5.3, and 5.6

Proposed: June 18, 2012 at 44 N.J.R. 1761(a) (see also 44 N.J.R. 2101(a)).

Adopted: January 18, 2013, by Kenneth E. Kobylowski, Commissioner, Department of Banking and Insurance.

Filed: January 18, 2013 as R.2013 d.034, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and 17B:27B-1 et seq.

Effective Date: February 19, 2013.

Expiration Date: Pursuant to Executive Order No. 1 (2010), the chapter expiration date is extended from April 4, 2010 until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended chapter is readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) received two timely written comments from New Jersey Manufacturers Insurance Group and GEICO.

COMMENT: One commenter expresses concern with the proposed amendments. The commenter appreciates the Department's efforts to address these heretofore non-regulated entities through an existing regulation. The commenter recognizes that the proposed

amendments are narrowly drawn, expanding the definition of “benefits payer” to include automobile insurers for purposes of certification of third party billing services only. The commenter is concerned that this broadened definition might be used in other contexts, unfairly burdening automobile insurers. Accordingly, the commenter objects to the use of this definition in other contexts.

RESPONSE: The commenter has not provided any examples of how the broadened definition of “benefits payer” might unfairly burden automobile insurers nor is the Department aware of any other contexts in which the definition would be used. If in the future the Department receives information indicating that such developments have occurred, it may consider further rulemaking as may be appropriate.

COMMENT: One commenter fears that there will be unintended consequences with this proposal. The commenter notes that with these amendments, the Department seeks oversight of third party billers as it relates to automobile insurance. The commenter asserts that the proposal will only lead to more such companies billing no-fault insurers. The commenter states that they currently do not have any issues of fraud or other abuse as it relates to these companies, nor has it been their experience that they are being billed by them. However, they expect that this will change should the Department adopt these rules. The commenter contends that one can search the internet to see the myriad of issues insurers are facing elsewhere and does not want these issues to infiltrate New Jersey when they believe that there are other avenues to address this issue.

The commenter states that the Summary to this proposal notes that these companies may not recognize that the definition of benefit payers also applies to no-fault insurers. The

commenter assumes that these companies may already be certified and are billing those payers who are covered by the statute. The commenter questions why further certification is required if in fact automobile insurers are included in the definition. The commenter also asks whether it is correct that such companies are covered by the original certification, as it does not appear from their review of the applicable statutes and regulations that there are separate processes dependent upon the type of benefit payer. The commenter contends that, if New Jersey statutes and regulations are applicable to no-fault insurers, then no further action would be warranted, because the authority already exists.

The commenter states that a more prudent course of action to address this issue would be to prohibit, through regulatory enforcement, all third party billers from billing no-fault insurers. The commenter believes that automobile insurers are specifically excluded by statute from being billed by the companies which the Department recognizes in its proposal. The commenter also contends that there is support in the marketplace for this position because, if in fact third party billing companies believed they were permitted to bill automobile insurers, the use of these companies by medical providers would be much more extensive in New Jersey. The commenter believes this will take care of the issues the Department references in the proposal and at the same time limit the potential for any increase in fraud and other abuses.

The commenter states that in the Summary of the proposal, the Department opines that automobile insurers are health benefit payers because they provide no-fault benefits. However, the commenter asked that to be a health benefit payer, would not one have to be a health benefit plan? The commenter notes that the purpose and scope of the regulation the Department proposes to amend states:

N.J.A.C. 11:23-1.1 Purpose and scope

- (a) This chapter sets forth the licensing and registration requirements of third party administrators of health benefits plans and the certification requirement of third party billing services in accordance with the provisions of N.J.S.A. 17B:27B-1 et seq.
- (b) This chapter applies to all persons who act as, offer to act as, or hold themselves out to be, a third party administrator of health benefits plans or third party billing service in this State.

The commenter further contends that N.J.S.A. 17B:27B-1 is the underlying basis for the regulation and the statute specifies the insurers to which it applies, and an automobile insurer is clearly not within its scope. The commenter notes that N.J.S.A. 17B:27B-1 provides:

“As used in this act: ...

‘Insurer’ means a licensed health insurer, health, hospital or medical service corporation, health maintenance organization, dental service corporation or dental plan organization...”

Furthermore, the commenter states that automobile insurers are excluded from the definition of a health benefit plan. The commenter notes the Health Care Quality Act provides additional guidance as to the definition of what is a health benefit plan and states at N.J.S.A. 26:2S-2:

“‘Health benefits plan’ means a benefits plan which pays or provides hospital and medical expense benefits for covered services, and is delivered or issued for delivery in this State by or through a carrier. Health benefits plan includes, but is not limited to, Medicare supplement

coverage and risk contracts to the extent not otherwise prohibited by federal law. For the purposes of this act, health benefits plan shall not include the following plans, policies, or contracts: accident only, credit, disability, long-term care, CHAMPUS supplement coverage, coverage arising out of a workers' compensation or similar law, automobile medical payment insurance, personal injury protection insurance issued pursuant to P.L. 1972, c. 70 (C. 39:6A-1 et seq.), or hospital confinement indemnity coverage.”

Finally, the commenter requests that the Department reconsider this proposal based upon the statutes as currently drafted and the concerns that the commenter outlined; however, if the Department wishes to take any action in this regard, that authority lays solely within the purview of regulatory enforcement.

RESPONSE: The Department does not agree with the commenter and believes that the commenter misunderstands the purpose of the amendments. It is not the Department's intention to eliminate or reduce the number of third-party billers in automobile insurance. Rather, the intention is to assure that all entities acting as third-party billers understand that they are required to be registered, and are registered as third party billing services so as to better ensure a level playing field. The commenter is correct that PIP does not meet the statutory definition of a health benefits plan, but PIP is an unusual insurance vehicle in that it is a property and casualty coverage that is very similar to a health benefits plan. The Department believes that it makes the most sense and is consistent with the intent of N.J.S.A. 17B:27B-1 et seq. to include auto insurers in the definition of “benefit payer” in N.J.A.C. 11:23-1.2 so that entities that perform essentially the same services with respect to health payers and automobile insurers are subject to

the same regulation. While N.J.A.C. 11:23-1.1 refers to third party administrators “of health benefit plans,” it does not similarly qualify the reference therein to third party billing services, which are the subject of the proposed amendments, notwithstanding that the heading of Chapter 23 of Title 11 is “Third Party Administrators.” Moreover, N.J.S.A. 17B:27B-16, 18, and 20 all refer to third party billing services accepting monies from benefits payers. At N.J.S.A. 17B:27B-1, “benefits payer” is defined as “an insurer authorized to issue health or dental benefits plans in this state, or any other person who undertakes to provide and assumes financial risk for the payment of health or dental benefits and is obligated to pay claims for health or dental benefits to providers or other claimants.” Pursuant to N.J.S.A. 39:6A-4, automobile insurers are statutorily mandated to pay personal injury protection (PIP) claims and thus would clearly constitute an “other person” as referenced in the definition of “benefits payer” in N.J.S.A. 17B:27B-1.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments relate to the business of insurance and are not subject to any Federal requirements or standards.

Full text of the adoption follows:

TEXT