

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Organized Delivery Systems

Application Review Procedures; Net Worth, Deposits and Bond

Proposed Amendments: N.J.A.C. 11:22-4.5 and 4.8

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

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

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

Proposal Number PRN 2002-373

Submit comments by December 20, 2002 to:

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The agency proposal follows:

Summary

N.J.S.A. 17:48H-1 et seq., enacted January 18, 2000, provides for the licensure of “organized delivery systems” (ODS) that assume “financial risk,” as those terms are defined in N.J.S.A. 17:48H-1. The Department of Banking and Insurance (“Department”) adopted N.J.A.C. 11:22-4, effective October 21, 2002, notice of adoption of which is published elsewhere in this issue of the New Jersey Register, to implement N.J.S.A. 17:48H-1 et seq. to set forth the filing and operational requirements for an entity to be licensed as an ODS pursuant to the statute.

During the comment period on the original proposal, the Department received numerous comments from interested parties. A number of areas were raised by the comments where the Department agreed changes should be made to clarify or otherwise revise the requirements that could not be made upon adoption in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and Rules on Rulemaking, N.J.A.C. 1:30. The Department now proposes amendments to N.J.A.C. 11:22-4 to address these issues.

The Department proposes to amend N.J.A.C. 11:22-4.5(c) in response to concerns expressed in the public comments on the original proposal. Several commenters had expressed concern with N.J.A.C. 11:22-4.5(c), which provides that applications accepted after November 1 of each year shall not be reviewed until the next annual statement becomes available and is received for review. The review of such applications shall begin on April 1 of each year after receiving the annual statement, which shall be submitted no later than March 1 of each year. Commenters expressed concern that the delay in the review of applications received after November 1 for five months was unreasonable and would substantially delay the review of a new ODS. In response to this comment, the Department noted that the rule is consistent with the review of applications for certificates of authority to transact businesses as an insurer. However, the Department recognized that in the case of an ODS, heretofore not required to be licensed and otherwise not licensed as such an entity in another state, circumstances warrant change in this procedure. Accordingly, the Department proposes to revise the rule to eliminate the requirement that applications received after November 1 shall not be reviewed until the next annual statement becomes available. However, based on a review of the information that is provided, the Department may defer review of an application if the Department determines that it requires more recent financial information in order properly to evaluate the applicant's financial position.

The Department believes that this provides for expedition in the review process, while retaining the ability of the Department to obtain the most recent financial information if deemed necessary to evaluate properly the applicant's financial position.

The Department is also proposing to amend N.J.A.C. 11:22-4.8 to ensure greater consistency with the rules governing health maintenance organizations (HMOs) and to otherwise clarify definitions of "compensation" and "health care expenditures" for purposes of determining minimum net worth and deposit requirements. First, the Department is proposing to amend the net worth requirement at N.J.A.C 11:22-4.8(a)1 to provide that one of the amounts of net worth shall be two percent of the annual compensation received by the ODS, rather than six percent. The Department believes that this will maintain adequate net worth standards, comparable to HMOs, with respect to risk assumed in the provision of health care services. The Department is also proposing to "phase-in" the net worth requirement over 48 months; and the deposit requirement, above the minimum \$25,000, over two years, similar to that provided for HMOs under N.J.A.C. 8:38-11.1 and 11.4, respectively. Finally, in response to comments received on the original proposal, the Department is proposing definitions of "compensation" and "annual health care expenditures" with respect to determining net worth and deposit requirements. "Compensation" is defined to mean "amounts paid to the ODS by a carrier or other ODS for specified health care benefits (for example, hospital/medical, dental, radiology, etc.) provided to the policyholders or members of the carrier pursuant to agreements whereby the ODS assumes financial risk." "Health care expenditures" is proposed to be defined as "amounts paid for provider services provided under a contractual arrangement and includes salaries, including fringe benefits, paid to providers for delivery of health care services; capitation payments paid by the ODS to providers for delivery of health care services; and fees paid to providers on a fee-for-

service basis for delivery of health care services, including capitated referrals; and net of reinsurance recoveries.” Annual health care expenditures do not include expenses for the time of providers devoted to administrative tasks. Questions were raised during the comment period on the original proposal as to whether capitated payments should be included. The Department has included capitated payments in the definition; however, these payments are excluded from determining net worth under the rules. The Department believes that it is appropriate to include these expenditures in that they reflect the financial risk assumed by the ODS and this treatment is consistent with the manner by which HMOs report these expenditures under annual and quarterly reporting requirements, to which ODSs are also subject.

Accordingly, the proposed amendments clarify existing requirements in the ODS rules, as well as provide for a phasing-in of net worth and deposit requirements, consistent with requirements governing HMOs, and revise the procedures with respect to the review of ODS licensure applications. The Department believes that the proposed amendments continue to further the intent of the Legislature to ensure that an ODS is in a position to pay its obligations when due, while providing appropriate guidance and flexibility by which an ODS may comply with licensure requirements.

A 60-day comment period is provided and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal 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 amendments further clarify the existing regulatory framework for the licensing, operation and monitoring of an ODS that assumes financial risk to ensure compliance

with N.J.S.A. 17:48H-1 et seq. The proposed amendments provide additional flexibility by which an ODS may comply with the requirements set forth in the rules, while continuing to implement the intent of the Legislature to ensure that such entities possess the financial strength and expertise to provide the benefits or services for which they have contracted.

Economic Impact

An ODS subject to licensure shall continue to be required to bear all costs associated with an application to become licensed and maintain licensure under N.J.A.C. 11:22-4. However, the proposed amendments should impose no additional economic burden on ODSs seeking to become licensed or which are licensed. The proposed amendments provide for a phase-in of net worth and deposit requirements over a period of time so that entities heretofore not licensed nor required to be licensed may take steps to satisfy requisite financial levels, while the Department shall continue to monitor and ensure that such entities possess requisite financial strength to meet the obligations for which they have contracted. The proposed amendments also provide further guidance in terms of determining net worth and deposit requirements and provide a streamlined procedure by which applications shall be reviewed. The Department believes that the proposed amendments provide additional flexibility to ODSs required to be licensed, while continuing to maintain proper regulatory oversight consistent with the intent of the Legislature in N.J.S.A. 17:48H-1 et seq.

Federal Standards Statement

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

Jobs Impact

The Department does not believe that any jobs should be generated or lost as a result of the proposed amendments. As noted in the proposal Summary, the proposed amendments provide further guidance with respect to determining net worth and deposit requirements of an ODS required to be licensed by the Department, provide for a phase-in of financial requirements over a specified period of time consistent with the phase-in provided to HMOs, and provide a revised procedure by which applications shall be reviewed. The Department does not believe that any additional staff will be required either by an ODS or the Department to implement the proposed amendments.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed amendments together with their written comments on other aspects of the proposal.

Agriculture Industry Impact

The proposed amendments will have no agriculture industry impact.

Regulatory Flexibility Analysis

The proposed amendments may apply to “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The small businesses affected by the proposed amendments will be entities seeking to become licensed, or which are licensed, as an ODS. These entities continue to be subject to all requirements and are required to bear all costs of compliance in N.J.A.C. 11:22-4.

The proposed amendments provide no different reporting, recordkeeping or other compliance requirements based on business size. It is not anticipated that there will be any need for other professional services. As noted in the Summary above, the proposed amendments revise existing requirements or provide additional clarification with respect to net worth and deposit requirements, application procedures, and determination of appropriate net worth and deposit requirements, as set forth in the existing rules. Such requirements apply equally to an ODS irrespective of business size. Differentiation based on business size would not be feasible or appropriate. In addition, as noted in the Economic Impact above, the Department believes that the proposed amendments impose no additional burdens on an ODS or an entity seeking to become licensed as an ODS.

For the foregoing reasons, the proposed amendments provide no differentiation in compliance requirements based on business size.

Smart Growth Impact

The proposed amendments will not have an 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]):

11:22-4.5 Application review procedures

(a) - (b) (No change.)

(c) [Applications accepted after November 1 of each year shall not be reviewed until the next annual statement becomes available and is received for review. The review of such applications shall begin as of April 1 of each year, after the receipt of annual statements which shall be submitted no later than March 1 of each year.] **The Department may defer the review of an application accepted after November 1 until the most recent financial information becomes available if, based on the information provided in the application, the Department determines that it is necessary to review more recent financial information to evaluate properly the applicant's financial position.**

(d) - (f) (No change.)

11:22-4.8 Net worth, deposits and bond

(a) Except as provided in (i) below, a licensed organized delivery system shall, at all times, have and maintain a minimum net worth, determined on a statutory accounting basis, in an amount equal to the greater of:

1. [Six] **Two** percent of the annual compensation received by the organized delivery system for all of its contracts, but in no event less than \$100,000; or

2. An amount equal to the sum of eight percent of the annual health care expenditures (not including those expenditures paid on a capitated basis and those made on a managed hospital payment basis), as reported for the most recent four calendar quarters, plus four percent of the annual hospital expenditures paid on a managed hospital payment basis for the most recent four calendar quarters.

i. (No change.)

ii. The minimum net worth requirements shall be phased-in over 48 months, so that an ODS shall maintain 25 percent of the minimum net worth required in (a) above at the end of the 12th month after it was issued a license; 50 percent of the minimum net worth required at the end of the 24th month following the month it was issued a license; 75 percent of the minimum net worth required at the end of the 36th month following the month it was issued a license; and 100 percent of the minimum net worth required at the end of the 48th month following the month it was issued a license.

(b) - (d) (No change.)

(e) A licensed organized delivery system shall deposit with the Commissioner in accordance with the procedures set forth in N.J.A.C. 11:2-32, cash, securities, or any combination of these or other measures that is acceptable to the Commissioner in an amount equal to 50 percent of the highest calendar quarterly compensation of the most recent four quarters, but in no event less than \$25,000, which amount shall be adjusted annually in accordance with changes in the Consumer Price Index. The deposit shall be deemed an admitted asset of the system in the determination of net worth. **The deposit amount, above the \$25,000 minimum, shall be payable over a two-year period, with 50 percent of the required amount above the minimum required amount payable at the end of the 12th month after it was issued a license.**

(f) - (i) (No change.)

(j) For purposes of determining net worth and deposit requirements set forth in this section, “compensation” shall mean amounts paid to the ODS by a carrier or other ODS for specified health care benefits (for example, hospital/medical, dental, radiology,

etc.) provided to the policyholders or members of the carrier pursuant to agreements whereby the ODS assumes financial risk.

(k) For purposes of determining net worth and deposit requirements set forth in this section, health care expenditures means amounts paid for provider services provided under a contractual arrangement and includes salaries, including fringe benefits, paid to providers for delivery of health care services; capitation payments paid by the ODS to providers for delivery of health care services; and fees paid to providers on a fee-for-service basis for delivery of health care services, including capitated referrals; and net of reinsurance recoveries. Annual health care expenditures do not include expenses for the time of providers devoted to administrative tasks.