

**INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF INSURANCE**

**Health Benefit Plans  
Exclusions and Preauthorization Requirements**

**Actuarial Services  
Group Life, Group Health and Blanket Insurance: General Standards for Contract Provisions**

Proposed New Rules: N.J.A.C. 11:22-6  
Proposed Amendments: N.J.A.C. 11:4-42.5

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

Authority: N.J.S.A. 17:1-8.1 and 15e, 17B:27-49g, and 26:2J-43h.

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

Proposal Number: PRN 2003-214

Submit comments by August 1, 2003 to:

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The agency proposal follows:

**Summary**

The National Association of Insurance Commissioners (NAIC) has been examining the issue of coverage by health insurance carriers of adverse reactions to smallpox vaccinations and secondary exposure to the disease through contact with a vaccinated person. Health contracts typically contain an exclusion for injury or illness

due to declared or undeclared war. Questions have been raised recently as to whether carriers would invoke this exclusion and deny coverage to persons who experience adverse reactions to the smallpox vaccine or who become ill due to exposure to a vaccinated person. An informal survey of health carriers conducted by the Department indicated that it would be appropriate for the Department to clarify its policy on this issue. The purpose of this proposal is to set standards for war exclusions in health benefit plans and in group life insurance policies and certificates similar to those that apply in individual life insurance policies.

The Department has also noted that its current rules regarding preauthorization of medical services, including the 50 percent cap on the penalty where the service would have been covered but for failure to obtain preauthorization, are applicable to group health insurance but not to coverage provided by health maintenance organizations. The Department believes that persons covered by health maintenance organization contracts should be provided the same level of protection with respect to preauthorization as are persons covered by policies issued by health insurance companies. Accordingly, the Department is adding a section, N.J.A.C. 11:22-6.4, dealing with preauthorization in contracts issued by health maintenance organizations which contains essentially the same provisions as are applied to health insurance companies at N.J.A.C. 11:4-42.8 except for N.J.A.C. 11:4-42.8(a)5 because that paragraph refers to a statute that is not applicable to health maintenance organizations.

The Department's proposal adds a new subchapter to Chapter 22 (Health Benefit Plans), which includes the following provisions:

N.J.A.C. 11:22-6.1 sets forth the purpose and scope of the proposed new subchapter.

N.J.A.C. 11:22-6.2 contains definitions of the terms used throughout the subchapter.

N.J.A.C. 11:22-6.3 establishes the Department's policy concerning military exclusions, non-combatant civilian exclusions and civilian exclusions in health benefit plans.

N.J.A.C. 11:22-6.4 provides that essentially the same standards applicable to preauthorization by health insurance companies shall apply to health maintenance organizations that utilize preauthorization.

N.J.A.C. 11:22-6.5 indicates that all noncomplying forms shall be deemed withdrawn as of January 1, 2004.

The Department is also amending N.J.A.C. 11:4-42, Group Life, Group Health and Blanket Insurance: General Standards for Contract Provisions by adding language at N.J.A.C. 11:4-42.5, Prohibited provisions, that would only permit war exclusions in group life insurance policies and contracts that comply with the requirements of N.J.A.C. 11:4-41.4(a)3i through iii (individual life insurance policy forms war exclusions). Text is also being added to this provision, for group policies and certificates providing life insurance, to specify that any amount payable due to a death from an excluded act shall not be less than the total premiums paid by or on behalf of the covered person.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

These proposed new rules and amendments will have a positive impact on New Jersey citizens. Clear standards for the scope of war exclusions in health benefit plans and group life insurance contracts will resolve any uncertainties as to the types of losses that may be excluded and what losses may not be excluded. Moreover, extension of the preauthorization requirements to health maintenance organizations further protects consumers by limiting the financial penalty imposed for failure to obtain preauthorization of a service that would otherwise be covered. At least one health maintenance organization currently denies all benefits for medically necessary services where preauthorization was not obtained. These rules limit this penalty to 50 percent in such situations, the same limit that applies to health insurance companies.

### **Economic Impact**

These proposed new rules and amendments may unfavorably impact carriers because the Department is specifying clear standards for the scope of war exclusions in health benefit plans and group life insurance policies and contracts. To the extent that carriers currently have broader exclusions in these contracts, the exclusions will be limited in effect. Consumers will be favorably impacted because they cannot be denied coverage when appropriate.

Similarly, health maintenance organizations that deny benefits for medically necessary services for failure to obtain preauthorization will have an adverse economic impact because they will be required to pay at least 50 percent of the benefit in those

situations. Consumers, on the other hand, will be favorably impacted because they will receive at least a 50 percent benefit rather than no benefit if they obtain medically necessary otherwise covered services that were not preauthorized.

#### **Federal Standards Statement**

A Federal standards analysis is not required because these new rules and amendments are not subject to any Federal standards or requirements.

#### **Jobs Impact**

The Department does not anticipate that the proposed new rules and amendments will result in the generation or loss of jobs.

#### **Agriculture Industry Impact**

The Department does not believe that the proposed new rules and amendments will have any impact on the agriculture industry in the State.

#### **Regulatory Flexibility Analysis**

The proposed new rules and 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 rules and amendments establish clear standards regarding carriers' application of war exclusions in health benefit plans and in group life insurance policies and contracts.

Carriers affected by these new rules and amendments may experience additional costs related to compliance with the rules and amendments. Nevertheless, in order to provide adequate protection to New Jersey consumers, the war exclusion and preauthorization standards set forth in these rules and amendments must be applied consistently to all carriers issuing health benefit plans and group life insurance policies and contracts, and no exception can be made for small businesses. Compliance with the proposed new rules and amendments should not require the employment of professional services.

### **Smart Growth Impact Statement**

The proposed new rules and amendments have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

**Full text** of the proposal follows (additions indicated in boldface **thus**):

CHAPTER 4        ACTUARIAL SERVICES

SUBCHAPTER 42. GROUP LIFE, GROUP HEALTH AND BLANKET INSURANCE:  
GENERAL STANDARDS FOR CONTRACT PROVISIONS

11:4-42.5    Prohibited provisions

(a) - (i)        (No change.)

**(j)    Group policies and certificates providing life insurance may only include war exclusions that comply with N.J.A.C.11:4-41.4(a)3i through iii. Any amount payable as a result of a death from an excluded act shall be no less than the total premiums paid by or on behalf of the covered person.**

**1. Forms filed before (the effective date of this amendment) with noncomplying war exclusions shall be administered in accordance with the standards of N.J.A.C. 11:4-41.4(a)3i through iii and shall be deemed withdrawn as of January 1, 2004.**

SUBCHAPTER 6. EXCLUSIONS AND PREAUTHORIZATION REQUIREMENTS

11:22-6.1 Purpose and scope

(a) This chapter specifies standards for war and other exclusions and preauthorization requirements in health benefit plans.

(b) This chapter applies to any insurance company, health service corporation, medical service corporation, hospital service corporation and health maintenance organization that issues health benefit plans in New Jersey.

11:22-6.2 Definitions

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

“Act of war” means any act peculiar to military, naval or air operations in time of war.

“Carrier” means an insurance company, health service corporation, hospital service corporation, medical service corporation, or health maintenance organization authorized to issue health benefit plans in this State.

“Covered person” means a person on whose behalf a carrier is obligated to pay benefits or provide services pursuant to the health benefits plan.

“Health benefits plan” means any hospital and medical expense insurance policy or certificate; health, hospital, or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in this State by any carrier. For purposes of this subchapter, “health benefits plan” shall not include one or more, or any combination of, the following: coverage only for accident or disability income insurance, or any combination thereof; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability insurance; credit-only insurance; coverage for on-site medical clinics; and other similar insurance coverage, as specified in Federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits. Health benefit plans shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan: limited scope dental or vision benefits; benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and such other similar, limited benefits as are specified in Federal regulations. Health benefit plans shall not include hospital confinement indemnity coverage if: the benefits are provided under a separate policy, certificate or contract of insurance; there is no coordination between the provision of the benefits and any exclusion of benefits under any group health benefits plan maintained by the same plan sponsor; and those benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor. Health benefits plan shall not include the following if it is offered as a separate policy, certificate or contract of insurance:



Medicare supplemental health insurance as defined under section 1882(g)(1) of the Federal Social Security Act (42 U.S.C. § 1395ss(g)(1)); and coverage supplemental to the coverage provided under chapter 55 of Title 10, United States Code (10 U.S.C. § 1071 et seq.); and similar supplemental coverage provided to coverage under a group health plan.

“Home area” means the 50 states of the United States of America, the District of Columbia and Canada.

“Preauthorization” means the process by which carriers determine the medical necessity and/or medical appropriateness of otherwise covered treatments and procedures prior to the rendering of such treatments and procedures including, but not limited to, preadmission review, pretreatment review, utilization and case management.

“War” includes, but is not limited to, declared war, and armed aggression by one or more countries resisted on orders of any other country, combination of countries or international organization.

#### 11:22-6.3 War exclusions

(a) The Department shall permit war risk exclusions in health benefit plans only if they consist of military exclusions, noncombatant exclusions and/or civilian exclusions. Military, noncombatant and civilian exclusions shall be no more restrictive than the following:

1. Military exclusions may exclude treatment of illness or injury suffered:

i. As a result of war or an act of war, if the illness or injury occurs while the covered person is serving in the military, naval or air forces of any country, combination of countries or international organization; and

ii. As a result of the special hazards incident to service in the military, naval or air forces of any country, combination of countries or international organization, if the illness or injury occurs while the covered person is serving in such forces and is outside the home area.

2. Non-combatant civilian exclusions may exclude treatment of illness or injury suffered:

i. As a result of war or an act of war while the covered person is serving in any civilian non-combatant unit supporting or accompanying any military, naval or air forces of any country, combination of countries or international organization; and

ii. As a result of the special hazards incident to service in any civilian non-combatant unit supporting or accompanying such forces, provided the illness or injury occurs while the covered person is serving in such unit and is outside the home area.

3. Civilian exclusions may exclude treatment of illness or injury suffered as a result of war or an act of war while the covered person is not in the military, naval or air forces of any country, combination of countries or international organization or in any civilian non-combatant unit supporting or accompanying such forces, if the illness or injury occurs outside the home area.

11:22-6.4 Requirements for preauthorization provisions

Preauthorization provisions may be included in health benefit plans only upon compliance with the requirements of N.J.A.C. 11:4-42.8, except for N.J.A.C. 11:4-42.8(a)5.

11:22-6.5 Effect on previously filed forms

(a) Forms filed before (effective date of this rule) with noncomplying war exclusions and/or preauthorization provisions shall be administered in accordance with the standards of N.J.A.C. 11:22-6.3 and 6.4 and shall be deemed withdrawn as of January 1, 2004.

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