

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

Third Party Administrators of Health Benefits and Third Party Billing Services

Proposed New Rules: N.J.A.C. 11:23

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

Authority: N.J.S.A. 17:1-8.2, 17:1-15e and 17B:27B-1 et seq.

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

Proposal Number: PRN 2004-88

Submit comments by May 14, 2004 to:

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The agency proposal follows:

Summary

On December 13, 2001, N.J.S.A. 17B:27B-1 et seq. (the "Act") was enacted requiring all third party administrators of health and dental benefits plans to be licensed or registered with the Commissioner of Banking and Insurance (Commissioner), and that all third party billing services be certified by the Commissioner. The Act set forth various requirements including required applicant information, the standards for approval of applications, annual reporting requirements

and fiduciary duties. In addition, the Act required the Commissioner to adopt rules and regulations to implement its provisions.

Therefore, the Department is proposing these new rules to implement the Act. The Department's proposed new rules include the following:

Subchapter 1, General Provisions, includes N.J.A.C. 11:23-1.1, which sets forth the purpose and scope of the chapter, and N.J.A.C. 11:23-1.2, which defines the terms, used throughout the chapter. Definitions are included for “Act,” “affiliate,” “benefits payer,” “client,” “Commissioner,” “control,” “Department,” “enrollee,” “health benefits plan,” “health care provider,” “impaired third party administrator” “insolvent third party administrator,” “insurer,” “NAIC,” “temporary initial license, registration or certification,” “third party administrator” and “third party billing service.”

Subchapter 2, License or Registration Requirements for Third Party Administrators, consists of five sections. N.J.A.C. 11:23- 2.1 sets forth the requirement that no person may act, offer to act or hold themselves out to be a third party administrator unless licensed or registered by the Commissioner. The section requires third party administrators who are not licensed by the Department as insurers or organized delivery systems and are not an affiliate or subsidiary of an insurer to be licensed. Likewise, third party administrators that are affiliates or subsidiaries of an insurer that only process or pay claims on behalf of benefits payers other than insurers must be licensed. Third party administrators that are subsidiaries or affiliates of an insurer that process claims on behalf of the insurer and other benefits payers as well, must be registered.

N.J.A.C. 11:23-2.2 sets forth the application filing requirements for licensure or registration, including all the information that must be included with the application.

N.J.A.C. 11:23-2.2(a) requires that all third party administrators operating in this State prior to adoption of these rules include with their application for licensure or registration, a

certification. The Commissioner may rely on this certification to issue a temporary initial license or registration, which will allow the applicant to continue operating while the application for the permanent license or registration is being reviewed.

N.J.A.C. 11:23-2.2(b) requires all third party administrators subject to licensure or registration who do not apply for a temporary initial license within the 90 days of the effective date of this chapter, to obtain licensure or registration before operating or continuing to operate in this State.

N.J.A.C. 11:23-2.2(c) requires all applications or registrations to be on a form prescribed by the Commissioner and which will be available on the Department's website address at www.njdoji.org/tpapage.htm. It also delineates the information to be supplied with the application as required by N.J.S.A. 17B:27B-3. The information includes copies of: basic organizational documents; executed bylaws, rules and regulations; biographical affidavits on each person responsible for the conduct of the third party administrator's affairs; the most recent audited financial statement; statements of any criminal convictions, enforcement or regulatory actions against each person responsible for the conduct of the affairs of the third party administrator; and the business plan. The biographical affidavits must be on forms which can be found either on the Department's website or on the NAIC website at <http://www.naic.org/ucaa/forms/forms.htm>.

N.J.A.C. 11:23-2.2(d) requires applicants to make available for inspection by the Commissioner copies of all contracts with persons with whom the third party administrator does claims administration business.

N.J.A.C. 11:23-2.3(a) sets forth the minimum standards for approval of the application for licensure or registration as a third party administrator by the Commissioner. The applicant must submit all materials required. All persons responsible for conducting the applicant's affairs

must be competent, trustworthy, of good reputation and possess the appropriate experience, training and education. Applicants must demonstrate the ability to operate the business efficiently. The standard contract forms to be used by the applicant must be acceptable. Applicants must have adequate financial arrangements with the benefits payer and make adequate provision for complying with N.J.S.A.17B:30-23 and N.J.A.C. 11:22-3 (the “prompt pay” laws), if applicable. The compensation arrangement between the applicant and the benefits payer may not result in the assumption of financial risk by the applicant. The name used by the applicant to do business in the State must not so closely resemble the name of an insurer authorized to do business in this State or otherwise include such descriptive language as to be likely to mislead the public with respect to the nature of its business operations. Lastly, the applicant must meet all the requirements of the Act and the rules, and must demonstrate the ability to continue to meet all those requirements. The applicant must meet all the requirements of the Act and the rules, and must demonstrate the ability to continue to meet all those requirements.

N.J.A.C. 11:23-2.3(b) limits the applicability of some of the requirements of 2.3(a) to applicants for registration whose services are provided only to benefits payers other than an insurer.

N.J.A.C. 11:23-2.3(c) provides that the Commissioner may rely on the certification provided by the applicant to issue a temporary initial license or registration, which shall be valid for the earlier of one year, or until the entity's application is approved or disapproved based on a full and detailed review. The applicant will be advised that the Commissioner has relied on their certification and that the temporary license or registration is valid for one year or until the Commissioner approves or disapproves their application if sooner. Applications which have not been approved or disapproved, or on which the applicant has not been notified that the

application is incomplete within one year from date of issuance of the temporary initial license or registration, shall be deemed approved. This provision allows for those already operating to continue operating on the basis of the initial temporary licensure or registration while allowing the Department adequate time to complete the detailed review of all those already transacting business in the State.

N.J.A.C. 11:23-2.4 sets forth the procedure for review of the application. The time period for review of the application commences on the day the application is received. The Department shall advise an applicant if an application is incomplete not later than 60 days after receipt, specifying the missing items or information. If the applicant is not advised that the application is incomplete or disapproved within 60 days of the receipt of the application, that application is deemed complete and approved. If approval is deemed because the applicant is not advised that the application is incomplete or disapproved within the time limits, the applicant shall notify the Department in writing of its intent to rely on a deemed approval prior to commencing operations.

N.J.A.C. 11:23-2.5 concerns denial of applications. The Commissioner may deny an application for licensure or registration if the standards set forth by the Act or the regulations are not met. Applicants shall be notified by certified mail of the reasons for denial and may request a hearing by notice to the Commissioner no later than the 30th day after receipt of the notice of denial.

N.J.A.C. 11:23-3, Third Party Administrators, consists of nine sections. N.J.A.C. 11:23-3.1 requires written agreements between the administrator and the benefits payer, sets forth the provisions that the agreement must contain, and requires the agreement to be retained for the duration of the agreement and five years thereafter. The agreements must contain a description of the services to be provided by the administrator and the manner in which the administrator is

to be compensated. The agreement must delineate the responsibilities of the benefits payer to the administrator with respect to claims to be paid by the administrator on behalf of the benefits payer and the responsibilities of the administrator to the benefits payer. The agreement must also specify performance standards, evaluation criteria and penalties.

N.J.A.C. 11:23-3.2 sets forth the provisions concerning the books and records of a third party administrator. The Commissioner shall have access to all books and records of the administrator for purposes of examination, audit and inspection. The reasonable expense for examination, audit and inspection shall be borne by the third party administrator. The benefits payer shall own the records generated by the administrator pertaining to the benefits payer, with the administrator retaining the right of access to permit fulfillment of its contractual obligations. Lastly, if an agreement between the benefits payer and the administrator is canceled the administrator may, with written permission of the benefits payer, transfer all records to a new administrator.

N.J.A.C. 11:23-3.3 sets forth the rules for compensation of third party administrators who adjudicate claims. Commissions, fees or charges based solely on the number or amount of claims denied or adjusted downward by the administrator are prohibited.

N.J.A.C. 11:23-3.4 deems a third party administrator to act in a fiduciary capacity in the receipt and transmittal of the funds of benefits payers. It requires fidelity bonds to be maintained on each director, officer, partner or employee of the administrator in the amount of \$100,000 or, if greater, one percent of the total amounts received from benefits payers for the purpose of paying claims.

N.J.A.C. 11:23-3.5 sets forth the requirement that all funds remitted to an administrator by a benefits payer licensed or authorized to do business in New Jersey be held in separate accounts. Funds collected by the administrator from a provider or enrollee on behalf of a

benefits payer shall be maintained in a separate account in the name of the benefits payer, maintained in a joint account or remitted to the benefits payer, in accordance with the agreement between the benefits payer and the administrator. Funds shall not be commingled with any other funds of the administrator or other clients of the administrator. Joint accounts shall be deposited in a State or Federally chartered depository institution and the administrator shall provide the benefits payer with a monthly accounting of all transactions. Benefits payers shall have the responsibility of making funds available to the administrator, for payment of claims, in a timely manner, and an administrator shall not be liable to any party for the failure of the benefits payer to make funds available to pay a claim.

N.J.A.C. 11:23-3.6 requires that policies, certificates, booklets, termination notices or other written communications delivered by the benefits payer to the administrator be promptly delivered to enrollees by the administrator.

N.J.A.C. 11:23-3.7 requires that third party administrators notify the Commissioner of any change of control or other material fact affecting its qualifications for licensure including changes in names or contracts and addition of new clients or new benefits payers.

N.J.A.C. 11:23-3.8 sets forth the requirement that third party administrators file an annual unaudited report on or before March 1 and an audited annual report on or before June 1. The section also establishes a filing fee of \$100.

N.J.A.C. 11:23-3.9 sets forth the requirement that third party administrators shall not contract with or on behalf of a self-funded Multiple Employer Arrangement (MEWA) which is not registered pursuant to N.J.S.A. 17B:27C-1 et seq. It states that it is the responsibility of the third party administrator to verify the registration of the MEWA. The third party administrator shall be diligent in monitoring the status of the MEWA and shall report any change in status as a material change pursuant to N.J.A.C. 11:23-3.7.

N.J.A.C. 11:23-4, Suspension or Revocation of License or Registration, sets forth the grounds for suspension or revocation of a license or registration and further allows for an immediate suspension if certain conditions are met.

N.J.A.C. 11:23-4.1 permits the Commissioner to suspend or revoke a license if the third party administrator is in an unsound financial condition; is using methods or practices in the conduct of its business that render its further transaction of business in this State hazardous or injurious to the benefits payers with which it has contracted or to the public; has failed to pay any judgment rendered against it in this State within 60 days after the judgment has become final; has violated any lawful rule or order of the Commissioner or any provision of State law; has refused to be examined or to produce its accounts, records and files for examination, or if any of its officers have refused to supply information with respect to its affairs, or has refused to perform any other legal obligation as to an examination, when required by the Commissioner; has, without just cause, refused or failed to pay proper claims or perform services arising under its contracts; has at any time failed to meet any requirement, on the basis of which issuance of the initial license could have been refused had that failure then existed and been known to the Commissioner; has been convicted of, or has entered a plea of guilty or nolo contendere to a felony or crime of the first, second or third degree in this State, without regard to whether adjudication was withheld; has had a credential as a third party administrator suspended, revoked or non-renewed for cause in another state; has willfully reimbursed enrollees for benefits not eligible under the benefits payer's benefits plan; has provided false or inaccurate information in the certification provided with an initial application for licensure or registration pursuant to N.J.A.C. 11:23-2.2(a) or in any other submission to the Department; or has contracted with or on behalf of a self-funded MEWA which is not registered pursuant to N.J.S.A. 17B:27C-1 et seq..

N.J.A.C. 11:23-4.1 (b) allows the Commissioner to impose a fine upon the administrator in lieu of, or in addition to, suspension or revocation.

N.J.A.C. 11:23-4.2(a) allows the Commissioner, without advance notice or hearing, to enter an order temporarily suspending the license or registration of a third party administrator if he or she finds that one or more of the following circumstances exist: the administrator is insolvent or impaired; a proceeding for receivership, conservatorship, rehabilitation or other delinquency proceeding regarding the administrator has been commenced in another state; or the financial condition or business practices of the administrator otherwise pose an imminent threat to the public health, safety or welfare of the residents of this State. N.J.A.C. 11:23-4.2(b) requires a hearing to be held within 30 days of the effective date of the temporary suspension to determine if the suspension should continue.

N.J.A.C. 11:23-4.3(a) provides that the Commissioner may, upon notice and hearing, assess a civil administrative penalty in an amount not less than \$250.00 nor more than \$5,000 for each day that a third party administrator is in violation of the Act. A penalty imposed by the Commissioner pursuant to this section may be in lieu of, or in addition to, suspension or revocation of a license pursuant to the Act. A penalty may be recovered in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c. 274 (N.J.S.A. 2A:58-10 et seq.).

N.J.A.C. 11:23-5, Third Party Billing Services, sets forth the rules for third party billing services.

N.J.A.C. 11:23-5.1(a) sets forth the requirement that no person may act as, offer to act as or hold themselves out as being a third party billing service unless certified by the Commissioner. N.J.A.C. 11:23-5.1(b) requires that all third party billing services operating in the State prior to the effective date of this chapter apply for a temporary initial certification within

120 days of the effective date of the chapter. The rule requires third party billing service applicants to certify that the application is complete, that the applicant is familiar with all pertinent statutory and regulatory requirements and that the applicant has met or exceeded all those requirements. The use of the temporary initial certification will allow those already operating to continue to operate if they obtain the temporary initial certification, while at the same time allowing the Department adequate time to review the initial applications for certification. N.J.A.C. 11:23-5.1(c) states that, with the exception of those who apply for temporary initial certification within 120 days of the effective date of this chapter all third party billing services shall obtain certification prior to operating in this State.

N.J.A.C. 11:23-5.2 sets forth the application filing requirements for certification, including all of the information that must be included with the application. The information includes copies of: basic organizational documents; executed bylaws, rules and regulations; the names, addresses and official positions of each person responsible for conducting the affairs of the third party billing service; the business plan; a list of the applicant's clients; the standard contract; and, if the applicant accepts monies from benefits payers on behalf of clients, its most recent audited financial statement and a power of attorney appointing the Commissioner for receipt of service of all lawful process.

N.J.A.C. 11:23-5.3 requires that a third party billing service file with the Commissioner a description of the applicant's proposed method of marketing; a statement setting forth the means by which the applicant is to be compensated and a description of the quality assurance procedures established. In addition, applicants must have adequate provision for complying with the provisions of N.J.S.A. 17B:30-23 and N.J.A.C. 11:22-3, "prompt pay" laws.

N.J.A.C. 11:23-5.4(a) sets forth the minimum standards for approval of the application for certification as a third party billing service by the Commissioner. The applicant must submit

all materials required. All persons responsible for conducting the applicant's affairs must be competent, trustworthy, of good reputation and possess the appropriate experience, training and education. Applicants must demonstrate the ability to operate the business efficiently. The standard contract forms used by the applicant must be acceptable. In addition, applicants must have adequate provision for complying with the provisions of N.J.S.A.17B:30-23 et seq. and N.J.A.C. 11:22-3.1 et seq.

N.J.A.C. 11:23-5.4(b) provides that the Commissioner may rely on the certification received from the applicant to issue a temporary initial certification, which shall be valid for the earlier of one year, or until the entity's application is approved or disapproved based on a full and detailed review. In the case of a temporary initial certification, the applicant will be advised that the Commissioner has relied on the applicant's submissions and accompanying certification, and that the temporary certification issued by the Commissioner is valid for one year or until the Commissioner approves or disapproves their application if sooner.

N.J.A.C. 11:23-5.5 allows the Commissioner to deny an application for certification upon the finding that any of the standards established by the Act or these rules have not been met or, as provided in N.J.S.A. 17B:27B-5, for any other reasonable grounds. Notification of denial shall be by certified mail and set forth the reasons for denial. The applicant may request a hearing on the denial by notice to the Commissioner no later than the 30th day following the receipt of the notice of denial.

N.J.A.C. 11:23-5.6 requires that no third party billing service shall conduct business with a client without a written agreement that includes: the services to be provided by the service; the financial arrangements to be used if the service accepts monies on behalf of a client; provisions setting forth the respective liability of the client and service for the accuracy and eligibility of claims and provisions for the prompt submission of claims pursuant to the "prompt pay rules";

and the responsibilities of the service to the client with respect to the maintenance of appropriate back-up systems against loss of records and the maintenance of appropriate insurance coverage against the risk of loss.

N.J.A.C. 11:23-5.7 provides that third party billing services that accept monies from health benefits payers on behalf of a client act in a fiduciary capacity on behalf of the client in the receipt and transmittal of funds. Such monies are to be kept in a separate account maintained in the name of the client or jointly with the service and shall not be commingled with any other funds of the third party billing service or other clients of the third party billing service.

N.J.A.C. 11:23-5.8 requires a third party billing service to immediately notify the Commissioner of any fact or circumstance affecting its continuing qualification for certification, including any material change in its ownership or control.

N.J.A.C. 11:23-5.9 sets forth the standards for revocation or suspension of a third party billing service's certification.

N.J.A.C. 11:23-5.10 provides that the Commissioner may, upon notice and hearing, assess a civil administrative penalty in an amount not less than \$250.00 nor more than \$5,000 for each day that a third party billing service is in violation of the Act. A penalty imposed by the Commissioner pursuant to this section may be in lieu of, or in addition to, suspension or revocation of a license pursuant to the Act. A penalty may be recovered in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c. 274 (N.J.S.A. 2A:58-10 et seq.).

A 60 day comment period is provided on this notice of proposal, 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 Department believes that New Jersey consumers, benefits providers and insurers will be positively affected by the safeguards and protections established by the regulatory framework for the licensing, operation and monitoring of third party administrators (TPAs) and third party billing services (TPBs) created by these rules. Moreover, the proposed new rules will affect all persons or entities that act as, offer to act as or hold themselves out to be TPAs or TPBs of health or dental benefits in the State of New Jersey, as well as New Jersey consumers, benefits providers and insurers of those benefits. Accordingly, TPAs and TPBs will be directly affected by the requirement to be licensed, registered or certified, and by being subjected to regulatory oversight.

Economic Impact

The Department believes that the proposed rules will have some negative economic effect on TPAs and TPBs who apply for a license, registration or certification, to the extent that these parties will be required to bear the costs associated with submitting applications, completing the documentation and preparing the annual reports. These expenses will vary according to the type and size of the entity and whether the entity is applying for licensing, registration or certification. While many of these administrative services may be completed in house with no additional staff, the annual audited report required of TPAs will require the use of a professional accountant, who may or may not be on staff. The Department believes that these expenses are a reasonable, necessary and appropriate cost of doing business.

The Department will incur some additional costs associated with processing applications and regulating TPAs and TPBs. The Department will seek to mitigate some of these costs by

charging reasonable examination fees. However, the Department's obligations, as well as the other reporting and compliance requirements for the TPAs and TPBs, are mandated by statute.

Further, the Department believes that there may also be a slight negative impact on consumers if the costs related to the licensing process are passed through to the consumer. However, the Department believes that any adverse economic impact to any of these entities will be outweighed by the benefits to New Jersey consumers and the insurers and other companies with which these entities do business. Licensing, registration or certification, and the ongoing oversight of the Department will help assure consumers and insurers that these entities have undergone scrutiny and possess the financial safety and soundness to fulfill their contractual obligations to those they serve.

Federal Standards Statement

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

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed new rules. With the exception of the professional services of an accountant as discussed in the Economic Impact above, the Department believes that implementation will be made by in house staff.

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

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the proposed new rules.

Regulatory Flexibility Statement

A regulatory flexibility analysis is required because some TPAs or TPBs may employ fewer than 100 full-time employees and therefore are “small businesses” as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Reporting and compliance requirements, which affect all TPAs and TPBs regardless of size, can be found in the rules. See the Summary above for a discussion of the reporting and compliance requirements and see the Economic Impact above for a discussion on the costs of these requirements.

The proposed new rules provide no different reporting, recordkeeping or other compliance requirements specifically based on business size. Businesses of all sizes will be required to use professional services for compliance, such as the accountant as discussed above. The use of these services as well as various other reporting, recordkeeping or other compliance requirements are mandated by the Act for businesses without regard to size. The proposed new rules establish a regulatory framework for the licensure, registration or certification of TPAs and TPBs to ensure they possess the minimum qualifications necessary to protect New Jersey consumers and those businesses with which they contract. Providing different compliance requirements based on business size would, therefore, thwart the intent of the Legislature as expressed in the Act. Therefore, the proposed new rules provide no differentiation in compliance requirements based on business size.

Smart Growth Impact

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

Full text of the proposed new rules follows:

CHAPTER 23

THIRD PARTY ADMINISTRATORS

SUBCHAPTER 1. GENERAL PROVISIONS

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.

11:23-1.2 Definitions

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

“Act” means N.J.S.A. 17B:27B-1 et seq., an act concerning third party administrators of health benefits plans and third party billing services.

"Affiliate" means any company that controls, is controlled by, or is under common control with another company.

"Benefits payer" means 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.

"Client" means a health care provider that contracts with a third party billing service to remit claims to benefits payers on behalf of the provider or other claimant.

"Commissioner" means the Commissioner of Banking and Insurance.

"Control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person.

“Department” means the New Jersey Department of Banking and Insurance.

"Enrollee" means a person entitled to receive benefits under a health benefits plan.

"Health benefits plan" means a benefits plan which pays or provides hospital and medical expense or dental benefits for covered services. For the purposes of this chapter, health benefits shall not include the following plans, policies or contracts: accident only, credit, disability, long-term care, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) supplement coverage, coverage arising out of a worker's compensation or similar law, automobile medical payment insurance, personal injury protection insurance issued pursuant to N.J.S.A. 39:6A-1 et seq. or hospital confinement indemnity coverage.

"Health care provider" or "provider" means an individual or entity, including for the purposes of this chapter, a group practice or faculty practice, which provides a covered benefit or service.

"Impaired third party administrator" means a third party administrator that is not insolvent but is deemed, by the Commissioner of this or any other state, to be potentially unable to fulfill its contractual obligations or that is placed under an order of rehabilitation, reorganization or conservation by a court of competent jurisdiction.

"Insolvent third party administrator" means a third party administrator:

1. Which is determined to be insolvent by a court of competent jurisdiction in this State or any other state;
2. Which files for relief in bankruptcy under Title 11 of the United States Code, 11U.S.C. §§ 101 et seq.;
3. Against which involuntary bankruptcy proceedings are filed under that title; or
4. For which a receiver has been appointed by a court of competent jurisdiction.

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

"NAIC" means the National Association of Insurance Commissioners.

“Temporary initial license, registration or certification” means a license, registration or certification issued by the Department for a limited period following the effective date of this chapter which allows third party administrators or third party billing services operating in this State prior to the effective date of this chapter to continue operating during the initial application process.

"Third party administrator" means a person or entity that: processes and pays claims on behalf of a benefits payer without the assumption of financial risk for the payment of health or dental benefits. Third party administrator shall include: an entity not licensed in New Jersey as an insurer that is not an affiliate or a subsidiary of a New Jersey licensed insurer, that processes claims on behalf of a benefits payer; an entity that is a subsidiary or an affiliate of a New Jersey licensed insurer that processes claims on behalf of that insurer and any other benefits payer; and an entity that is a subsidiary or affiliate of a New Jersey licensed insurer that only processes claims on behalf of benefits payers other than insurers. Third party administrator shall not include an employee, affiliate or subsidiary of a benefits payer formed for the purpose of processing and paying claims solely on behalf of the benefits payer, nor shall it include a collection agency or bureau or pharmacy benefits manager. For purposes of this chapter, third party administrator shall include organized delivery systems as defined by N.J.S.A. 17:48H-1, who are acting as third party administrators, which are certified by the Department of Health and Senior Services, but shall not include those organized delivery systems licensed by the Department of Banking and Insurance.

"Third party billing service" means a person or entity that is paid by a health care provider to process claims or claim payments on behalf of the health care provider, and that is not an employee, affiliate or subsidiary of the health care provider.

SUBCHAPTER 2. LICENSE OR REGISTRATION REQUIREMENTS FOR THIRD PARTY
ADMINISTRATORS

11:23-2.1 License or registration required

(a) No person shall act as, offer to act as, or hold himself out to be, a third party administrator in this State unless licensed or registered by the Commissioner as set forth in N.J.A.C. 11:23-2.2.

(b) Every third party administrator that is either not licensed in New Jersey as an insurer or an organized delivery system and is not an affiliate or subsidiary of an insurer licensed in New Jersey; or an affiliate or a subsidiary of a New Jersey licensed insurer and only processes or pays claims on behalf of benefits payers other than insurers shall be licensed by the Commissioner pursuant to the provisions of the Act.

(c) Every third party administrator that is a subsidiary or affiliate of an insurer licensed in New Jersey and processes claims on behalf of both that insurer and benefits payers other than that insurer shall be required to register with the Commissioner pursuant to the provisions of the Act.

11:23-2.2 Application filing requirements for licensure or registration of third party
administrators

(a) Any third party administrator operating in this State prior to the effective date of this chapter shall file an application for temporary initial licensure or registration within 90 days of

the effective date of this chapter. In addition to filing an application in accordance with (c) below, applicants for temporary initial licensure or registration shall file a certification on the form provided on the Department's website at www.njdobi.org/tpapage.htm. The applicant shall certify that the application is complete, the applicant is familiar with all the statutory and regulatory requirements applicable to third party administrators and that the applicant has met or exceeded those requirements. The applicant shall affirm that the Commissioner may rely on the certification in issuing a temporary initial license or registration.

(b) Except for those who apply for temporary initial licenses or registrations within 90 days of the effective date of this chapter, all third party administrators subject to licensure or registration shall obtain licensure or registration prior to operating in this State.

(c) Application for licensure or registration shall be made on a form prescribed by the Commissioner which can be found on the Department's website at www.njdobi.org/tpapage.htm. The information that shall accompany the application shall include:

1. A copy of the applicant's basic organizational documents, which shall include articles of incorporation, articles of association, partnership agreement, management agreement, trust agreement or other documents governing the operation of the applicant that are applicable to the applicant's form of business organization;

2. A copy of the executed bylaws, rules and regulations, or other documents relating to the operation of the applicant's internal affairs;

3. A biographical affidavit on the form provided on the Department's website at www.njdobi.org/tpapage.htm or on the NAIC biographical affidavit form, which is incorporated by reference as amended and supplemented and which can be found on the

NAIC website at <http://www.naic.org/ucaa/forms/forms.htm>, including the name, address and official position of each person responsible for conducting the affairs of the applicant, including, but not limited to, if applicable: the members of the board of directors, executive committee or other governing board or committee; the principal officers or partners; shareholders owning or having the right to acquire 10 percent or more of the voting securities of the corporation or partnership interest of a partnership, or equity interest, in the case of another form of business organization; or any person or entity who has loaned funds to the applicant for the operation of the business;

4. A statement of any criminal convictions or civil, enforcement or regulatory action, including actions relating to professional licenses, taken or pending against any of the persons who are responsible for the conduct of the affairs of the applicant or the applicant's affiliates, and the resolution of those actions and proceedings. If a license, certificate or other authority to operate has been refused, suspended or revoked by any jurisdiction, the applicant shall provide a copy of any orders, proceedings and determinations relating thereto;

5. A copy of the applicant's most recent financial statements audited by an independent certified public accountant. If the financial affairs of the applicant's parent company are audited by an independent certified public accountant, but those of the applicant are not, then a copy of the most recent audited financial statement of the applicant's parent company, audited by an independent certified public accountant, shall be submitted. An audited consolidated financial statement of the applicant and the parent company shall satisfy this requirement unless the Commissioner determines that additional or more recent information is required for the proper administration of the Act; and

6. A copy of the applicant's business plan, including:

i. A statement generally describing the applicant, its facilities, personnel, and the services to be offered by the third party administrator;

ii. Information on activities undertaken or to be undertaken in New Jersey;

iii. A statement of the applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing and recordkeeping, and information on staffing levels, including, but not limited to, training, hiring requirements, experience of staff;

iv. Evidence of establishment of a separate account for each benefits payer for payment of claims, with a description of the controls the applicant has put in place for it;

v. Evidence of a fidelity bond as required by N.J.A.C 11:23-3.4;

vi. A description of the applicant's proposed method of marketing its services in New Jersey;

vii. A statement setting forth the means by which the applicant will be compensated;

viii. A description of the complaint and appeals procedures instituted by the applicant;

ix. A description of the quality assurance procedures established by the applicant;

x. Three-year projections of anticipated operating results. In addition, the business plan shall include a description of the assumptions used in the projections that shall include an explanation of each line item;

xi. A statement of the sources of working capital and any other sources of funding;

xii. A description of the provision for contingencies that will enable the applicant to perform the work for which it has contracted;

xiii. A list of the benefits payers under contract with the applicant, and a copy of the standard contract or contracts used by the applicant in the course of business. In the case of an applicant for registration, the information required to be filed with the Commissioner shall apply only to services provided to benefits payers other than an insurer;

xiv. A list of the subcontractors under contract with the applicant, and a copy of the standard contract or contracts used by the applicant in the course of business with subcontractors;

xv. A list of the reinsurers with whom the applicant does business and copies of the contract or contracts used by the applicant in the course of business with reinsurers;

xvi. A list of all administrative, civil or criminal actions and proceedings to which the applicant, or any of its affiliates have been subject and the resolution of those actions and proceedings. If a license, certificate or other authority to operate has been refused, suspended or revoked by any jurisdiction, the applicant shall provide a copy of any orders, proceedings and determinations relating thereto; and

xvii. A power of attorney, duly executed by the applicant, if not domiciled in this State, appointing the Commissioner and his successors in office as the true and lawful attorney of the applicant in and for this State upon whom all lawful

process in any legal action or proceeding against the organization on a cause of action arising in this State may be served.

(d) An applicant shall make available for inspection by the Commissioner copies of all contracts with benefits payers or other persons with whom it does business, related to all services provided by them to benefits payers, including subcontractors and reinsurers.

11:23-2.3 Standards for approval of applications

(a) The Commissioner may issue a license to an applicant or approve an application for registration as a third party administrator if he or she finds that the applicant meets the following standards:

1. All of the materials required by the Act, this chapter or by the Commissioner have been filed;
2. The persons responsible for conducting the applicant's affairs are competent, trustworthy and possess good reputations, and have appropriate experience, training and education;
3. The applicant has demonstrated the ability to assure that its services will be performed in a manner which will ensure the efficient operation of its business, including appropriate financial controls;
4. The standard contract forms to be used by the applicant are acceptable;
5. The applicant has adequate financial arrangements with the benefits payers for which it will perform its services and adequate arrangements for complying with the provisions of N.J.S.A.17B:30-23 et seq. and N.J.A.C. 11:22, if applicable;

6. The compensation arrangements made between the applicant and benefits payers do not result in the assumption of financial risk by the applicant;

7. The name used by the applicant to do business in this State does not so closely resemble the name of an insurer authorized to do business in this State or otherwise include such descriptive language as to be likely to mislead the public with respect to the nature of its business operations; and

8. The applicant meets all requirements of the Act and these rules and demonstrates the ability to continue to meet all those requirements.

(b) In the case of an applicant for registration, the provisions of (a) 4, 5 and 6 above, shall apply only to services provided by the applicant to benefits payers other than an insurer.

(c) In the case of an applicant for temporary initial licensure or registration, the Commissioner may rely on the certification submitted pursuant to N.J.A.C. 11:23-2.2(a) in issuing a temporary, initial license or registration. Where the Commissioner has relied on such certification, the applicant shall be issued a temporary initial license or registration, which shall be valid for the lesser of a period of one year from the date of issuance of the temporary initial license or registration, or until such time as the Commissioner approves or disapproves the application based on a detailed review. Applications which have not been approved or disapproved, or on which the applicant has not been notified that the application is incomplete within one year from date of issuance of the temporary initial license or registration shall be deemed approved.

11:23-2.4 Procedures for review of applications

(a) The time period for the Department's review of an application shall commence the day the application is received.

(b) The Department shall advise the applicant if the application is incomplete not later than 60 days after receipt of the application.

(c) The application shall be deemed to be complete and approved if the applicant is not notified that the application is incomplete or disapproved within 60 days of the receipt of the application. If approval is deemed, the applicant shall notify the Department in writing of its intent to rely on a deemed approval prior to commencing operations.

(d) Notice to the applicant that the application has been found to be incomplete shall specify the missing item(s) or information.

(e) Any resubmission of the application after the deficiency has been cured shall be considered initial receipt.

(f) The Department may disapprove an incomplete application.

11:23-2.5 Denial of application

The Commissioner may deny an application for licensure or registration as a third party administrator if he or she finds that any of the standards established by the Act or these rules

have not been met or for any other reasonable grounds. If the application for licensure or registration is denied, the Commissioner shall notify the applicant in writing by certified mail, return receipt requested, setting forth his or her reasons for denial. The applicant may request a hearing by notice to the Commissioner no later than the 30th day following receipt of the notice of denial.

SUBCHAPTER 3. THIRD PARTY ADMINISTRATORS

11:23-3.1 Third party administrator agreement with benefits payer

(a) A third party administrator shall not conduct any business with a benefits payer in the absence of a written agreement between the administrator and the benefits payer. This subsection shall not apply to a third party administrator registered in accordance with N.J.A.C.

11:23-2.1(c) with respect to services performed for an insurer.

(b) The agreement shall be retained as part of the official records of the administrator for the duration of the agreement and for five years thereafter.

(c) The provisions of the agreement shall include, but shall not be limited to:

1. All services, including services other than processing and payment of claims, to be provided by the administrator and the manner in which the administrator is to be compensated;

2. The responsibilities of the benefits payer to the administrator with respect to claims to be paid by the administrator on behalf of the benefits payer, including:

- i. The provision of enrollment and eligibility information;
 - ii. Arrangement for a preliminary or escrowed deposit of funds by the benefits payer, if any;
 - iii. The method used for the transmittal of funds from the benefits payer to the administrator;
 - iv. Notification by the benefits payer of modifications in the benefits payer's benefits plan;
 - v. Provisions setting forth the respective liability of the administrator and benefits payer for payment of ineligible claims;
 - vi. Liability for claim payments that are overdue; and
 - vii. Provisions regarding the procurement of reinsurance or stop-loss insurance;
3. The responsibilities of the administrator to the benefits payer, including:
 - i. The maintenance of appropriate back-up systems against the loss of records;
 - ii. Establishment and maintenance of appropriate financial controls;
 - iii. Provisions regarding the benefits payer's rights with respect to the conducting of claims audits by an outside auditor;
 - iv. The maintenance of appropriate insurance coverage, which shall include general liability insurance, valuable papers insurance and errors and omissions coverage and such other coverage as is appropriate to the form of organization and nature of the business of the third party administrator;
 - v. Appropriate access by the benefits payer to the administrator's records;

vi. Procedures for making available the claims experience and other claims-related information to the benefits payer at its request, including, but not limited to, monthly reports; and

vii. Preparation or provision of data required for prompt-pay reports and payment of any penalties payable under the contract.

4. Specific performance standards, evaluation criteria and monetary amounts of penalties payable under the contract.

11:23-3.2 Access to certain information by the Commissioner

(a) The Commissioner shall have access to all books and records of a third party administrator for the purposes of examination, audit and inspection, the reasonable expense of which shall be paid to the Department by the third party administrator. Any trade secrets, proprietary information, information which if disclosed would give an advantage to competitors or bidders and the identities and addresses of enrollees contained in the books and records shall be kept confidential, except that the Commissioner may use the information in any proceeding instituted against the administrator or benefits payer.

(b) The benefits payer shall own the records generated by the administrator pertaining to the benefits payer, except that the administrator shall retain the right to continuing access to such books and records to permit the administrator to fulfill all of its contractual obligations to the benefits payer and its obligations to the Department.

(c) In the event that an agreement between an administrator and a benefits payer is canceled, the administrator may, with the written agreement of the benefits payer, transfer all records to a new administrator instead of retaining them for five years.

11:23-3.3 Adjudication of claims; compensation

If a third party administrator adjudicates claims under a health benefits plan, the commissions, fees or charges that the benefits payer pays the administrator shall not be based solely on the number or amount of claims denied or adjusted downward by the administrator. This provision shall not prohibit an administrator from receiving performance-based compensation if that compensation is not predicated on denial or downward adjustment of claims or coverage.

11:23-3.4 Fiduciary capacity of third party administrator; fidelity bond to be maintained

(a) A third party administrator shall be deemed to act in a fiduciary capacity on behalf of the benefits payer in the receipt and transmittal of the funds of a benefits payer, and shall have all responsibility attendant to a fiduciary as established by law.

(b) An administrator shall maintain in force a fidelity bond in its own name on its directors, officers, partners and employees.

(c) The minimum amount of the fidelity bond shall be the greater of \$100,000 or one percent of the total amounts received from benefits payers in the previous calendar year for the purpose of paying claims on behalf of benefits payers.

11:23-3.5 Funds to be maintained in separate accounts

(a) All funds remitted to an administrator by a benefits payer licensed or authorized to do business in this State shall be held by the third party administrator in a separate account maintained in the name of the benefits payer, or in a separate account maintained jointly in the names of the benefits payer and the administrator.

(b) If funds have been collected by the administrator from a provider or enrollee on behalf of a benefits payer, they shall be promptly deposited into a separate account maintained in the name of the benefits payer or an account maintained jointly in the names of the benefits payer and the administrator, or remitted to the benefits payer, as provided in the contract. Funds shall not be commingled with any other funds of the administrator or other clients of the administrator. Copies of all records pertaining to the collection of funds shall be made available to the benefits payer as provided in the contract.

(c) If an account is jointly held by the administrator and the benefits payer, it shall be maintained in a State or Federally chartered insured depository institution, and the administrator shall provide the benefits payer with a monthly accounting of all transactions in that account.

(d) A benefits payer shall have the responsibility to make available to the administrator funds necessary to enable the administrator to pay claims in a timely manner, as provided in the contract. An administrator shall not be liable to any party for the failure of the benefits payer to make funds available to pay claims.

11:23-3.6 Prompt delivery of certain information

Any policies, certificates, booklets, termination notices or other written communications delivered by the benefits payer to the third party administrator for delivery to enrollees shall be delivered by the administrator promptly, in accordance with the instructions of the benefits payer and the terms of their contract.

11:23-3.7 Notification of material change

A third party administrator shall immediately notify the Commissioner in writing of any material change in its ownership, control or other fact or circumstance affecting its qualifications for a licensure or registration, as applicable, including, but not limited to, a change in name, new or revised standard contracts or any other information required by this subchapter to be supplied with an initial license application. The notification shall be provided to the Commissioner at:

New Jersey Department of Banking and Insurance
Office of Life and Health
P. O. Box 325
Trenton, NJ 08625-0325

11:23-3.8 Annual report

(a) A third party administrator shall file with the Commissioner on or before March 1 of each year an unaudited annual report for the preceding calendar year. The report shall be prepared on a generally accepted accounting principles (GAAP) basis and shall contain the complete names and addresses of all benefits payers with which the administrator had a contract in effect during the preceding calendar year, and the status of all contracts in effect in the previous year.

(b) An audited annual report for the preceding calendar year, prepared on a GAAP basis, shall be filed on or before June 1 of each year. The filing fee for the audited annual report shall be \$100.00.

(c) Three signed copies of the unaudited and the audited annual reports shall be submitted to:

New Jersey Department of Banking and Insurance
Office of Solvency Regulation
P. O. Box 325
Trenton, NJ 08625-0325

11:23-3.9 Services provided to self-funded multiple employer welfare arrangements

No third party administrator shall contract with or on behalf of a self-funded multiple employer welfare arrangement (MEWA) which is not duly registered with the Department pursuant to N.J.S.A. 17B:27C-1 et seq. It shall be the responsibility of the third party

administrator to verify that a MEWA is so registered. The third party administrator shall be diligent in monitoring the status of the MEWA and shall report any change in status as a material change pursuant to N.J.A.C. 11:23-3.7.

SUBCHAPTER 4. SUSPENSION OR REVOCATION OF LICENSE OR REGISTRATION

11:23-4.1 Suspension or revocation of license; grounds and penalties

(a) The Commissioner may suspend or revoke a license or registration issued pursuant to the Act if he or she finds that the third party administrator:

1. Is in an unsound financial condition;
2. Is using methods or practices in the conduct of its business that render its further transaction of business in this State hazardous or injurious to the benefits payers with which it has contracted or the public;
3. Has failed to pay any judgment rendered against it in this State within 60 days after the judgment has become final;
4. Has violated any lawful rule or order of the Commissioner or any provision of State law;
5. Has refused to be examined or to produce its accounts, records and files for examination, or if any of its officers have refused to supply information with respect to its affairs, or has refused to perform any other legal obligation as to an examination, when required by the Commissioner;
6. Has, without just cause, refused or failed to pay proper claims or perform services arising under its contracts;

7. At any time fails to meet any requirement, on the basis of which issuance of the initial license could have been refused had that failure then existed and been known to the Commissioner;

8. Has been convicted of, or has entered a plea of guilty or nolo contendere to a felony or crime of the first, second or third degree in this State, without regard to whether adjudication was withheld;

9. Has had a credential as a third party administrator suspended, revoked or non-renewed for cause in another state;

10. Has willfully reimbursed enrollees for benefits not eligible under the benefits payer's benefits plan;

11. Has provided false or inaccurate information in the certification provided with an initial application for licensure or registration pursuant to N.J.A.C. 11:23-2.2(a) or in any other submission to the Department; or

12. Has contracted with or on behalf of a self-funded multiple employer welfare arrangement (MEWA) which is not registered pursuant to N.J.S.A. 17B:27C-1 et seq.

(b) If the Commissioner finds that one or more grounds exist for the suspension or revocation of a license or registration issued under the Act, the Commissioner may, in lieu of or in addition to suspension or revocation, impose a fine upon the administrator.

11:23-4.2 Temporary suspension of license or registration; grounds and penalties

(a) The Commissioner may, without advance notice or hearing, enter an order temporarily suspending the license or registration of a third party administrator if he or she finds that one or more of the following circumstances exist:

1. The administrator is insolvent or impaired;
2. A proceeding for receivership, conservatorship, rehabilitation or other delinquency proceeding regarding the administrator has been commenced in another state; or
3. The financial condition or business practices of the administrator otherwise pose an imminent threat to the public health, safety or welfare of the residents of this State.

(b) A hearing shall be held within 30 days of the effective date of the temporary suspension to determine if the suspension should continue.

11:23-4.3 Civil penalties

The Commissioner may, upon notice and hearing, assess a civil administrative penalty in an amount not less than \$250.00 nor more than \$5,000 for each day that a third party administrator is in violation of the Act. A penalty imposed by the Commissioner pursuant to this section may be in lieu of, or in addition to, suspension or revocation of a license or registration pursuant to the Act. A penalty may be recovered in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c. 274 (N.J.S.A. 11:2A:58-10 et seq.).

SUBCHAPTER 5. THIRD PARTY BILLING SERVICES

11:23-5.1 Acting as, or holding oneself out as, a third party billing service; certification required

(a) No person shall act as, offer to act as or hold himself out to be a third party billing service in this State unless certified by the Commissioner in accordance with the Act.

(b) Any third party billing service operating in this State prior to the effective date of this chapter shall file with the Department an application for temporary initial certification within 120 days of the effective date of this chapter. In addition to filing an application in accordance with N.J.A.C. 11:23-5.2(a), applicants for temporary initial certification as third party billing services shall certify, on the form provided on the Department's website at www.njdobi.org/tpapage.htm, that the application is complete, the applicant is familiar with all of the pertinent statutory and regulatory requirements, and the applicant has met or exceeded those requirements. The applicant shall further acknowledge that the Commissioner may rely on the certification in issuing a temporary initial certification.

(c) Except for those who apply for a temporary initial certification within 120 days of the effective date of this chapter, all third party billing services shall obtain certification prior to operating in this State.

11:23-5.2 Application filing requirements

(a) Application for certification shall be made to the Commissioner on a form provided by the Commissioner. The following information shall accompany the application:

1. A copy of the applicant's basic organizational documents, which shall include the trust agreement or other documents governing the operation of the applicant that are applicable to the applicant's form of business organization;

2. A copy of the executed bylaws, rules and regulations, or other documents relating to the operation of the applicant's internal affairs;

3. The names, addresses and official positions of the persons responsible for conducting the affairs of the applicant, including, but not limited to, if applicable: the members of the board of directors, executive committee or other governing board or committee, the principal officers or partners, shareholders owning or having the right to acquire 10 percent or more of the voting securities of the corporation or a 10 percent or more partnership interest of a partnership or equity interest, in the case of another form of business organization;

4. If the applicant accepts monies from benefits payers on behalf of clients, the application shall include a copy of the applicant's most recent financial statement audited by an independent certified public accountant;

5. A copy of the applicant's business plan, including information on staffing levels and the activities undertaken or to be undertaken in this State. The plan shall include a statement of the third party billing service's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing and recordkeeping;

6. A list of the applicant's clients and a copy of the standard contract or contracts used by the applicant in the course of business;

7. If the applicant is not domiciled in this State and accepts monies from benefits payers on behalf of clients, the application shall be accompanied by a power of attorney,

duly executed by the applicant, appointing the Commissioner and his or her successors in office as the true and lawful attorney of the applicant in and for this State for the purpose of accepting service of all lawful process in any legal action or proceeding against the organization on a cause of action arising in this State; and

8. A statement of any criminal convictions or civil, enforcement or regulatory actions, including actions relating to professional licenses, taken or pending against the applicant or any of the persons who are responsible for conducting the affairs of the applicant or the applicant's affiliates, and the resolution of those actions and proceedings, including judgments of convictions and judgments in civil actions. If a license, certificate or other authority to operate has been refused, suspended or revoked by any jurisdiction, the applicant shall provide a copy of any orders, proceedings, or determinations relating thereto.

11:23-5.3 Information to be provided to Commissioner

(a) In addition to the information otherwise required by the Act, these rules, or based upon the unique facts of particular cases, by the Commissioner, a third party billing service shall file with the Commissioner:

1. A description of the applicant's proposed method of marketing its services;
 2. A statement setting forth the manner in which the applicant is to be compensated;
 3. A description of the quality assurance procedures established by the applicant;
- and

4. A description of the procedures for prompt submissions of claims pursuant to the provisions of N.J.S.A. 17B:30-23 and N.J.A.C. 11:22-3.1.

11:23-5.4 Approval of certification application; standards

(a) The Commissioner may approve an application for certification as a third party billing service if he or she finds that the applicant meets the standards established by the Act, including, but not limited to, the following:

1. All of the information required by the Act, these rules or by the Commissioner has been filed;

2. The persons responsible for conducting the applicant's affairs are competent, trustworthy and possess good reputations, and have appropriate experience, training and education;

3. The applicant has demonstrated the ability to ensure that its services will be performed in a manner which will result in the efficient operation of its business, including, if the applicant accepts payments from benefits payers on behalf of its clients, appropriate financial controls;

4. The standard contract forms to be used by the applicant are acceptable; and

5. The applicant has adequate arrangements for complying with the provisions of N.J.S.A.17B:30-23 et seq. and N.J.A.C. 11:22-3.

(b) In the case of an applicant for temporary initial certification as a third party billing service, the Commissioner may rely on the applicant's submissions and certification submitted pursuant to N.J.A.C. 11:23-5.1(b) in issuing a temporary, initial certification. Where the

Commissioner has, on that basis, determined to do so, the applicant shall be issued a temporary initial certification, which shall be valid for the lesser of a period of one year from the date of issuance of the temporary initial certification or until such time as the Commissioner approves or disapproves the application based on a detailed review. Applications which have not been approved or disapproved, or where the applicant has not been notified that the application is incomplete, within one year from date of issuance of the temporary initial certification, shall be deemed approved.

11:23-5.5 Denial of application for certification

(a) The Commissioner may deny an application for certification as a third party billing service if he or she finds that any of the standards established by the Act or these rules have not been met or for any other reasonable grounds.

(b) If the application for certification is denied, the Commissioner shall notify the applicant in writing by certified mail, return receipt requested, setting forth the reasons for the denial.

(c) The applicant may request a hearing by notice to the Commissioner no later than the 30th day following receipt of the notice of denial.

11:23-5.6 Written agreement between third party billing service and client

(a) A third party billing service shall not conduct any business with a client in the absence of a written agreement between the billing service and the client. The agreement shall be retained as part of the official records of the third party billing service for the duration of the agreement.

(b) The agreement shall include:

1. The services to be provided by the third party billing service on behalf of the client;

2. Financial arrangements to be used if the third party billing service accepts monies from benefits payers on behalf of a client;

3. Provisions setting forth the respective liability of the client and the third party billing service for the accuracy and eligibility of submitted claims, and for the prompt submission of claims pursuant to the provisions of N.J.S.A. 17B:30-23 and N.J.A.C. 11:22-3.1; and

4. The responsibilities of the third party billing service to the client with respect to the maintenance of appropriate back-up systems against the loss of records, and the maintenance of appropriate insurance coverage by the third party billing service against the risk of loss.

11:23-5.7 Fiduciary duty of third party billing service; maintenance of separate accounts

(a) A third party billing service that accepts monies from health benefits payers on behalf of a client shall be deemed to act in a fiduciary capacity on behalf of the client in the receipt and transmittal of funds and shall have all responsibility attendant to a fiduciary as established by law.

(b) Monies transmitted by benefits payers or on behalf of clients shall be kept in a separate account maintained in the name of the client or jointly in the names of the client and the third party billing service, and shall not be commingled with any other funds of the third party billing service or other clients of the third party billing service.

11:23-5.8 Notification of material change in ownership or control of, or in other previously supplied information related to the billing service

A third party billing service shall immediately notify the Commissioner of any material change in its ownership, control, or other fact or circumstance affecting its continuing qualification for Certification.

11:23-5.9 Suspension or revocation of certification; grounds

(a) The Commissioner may suspend or revoke a certification issued pursuant to the Act if he or she finds that the third party billing service:

1. Is using methods or practices in the conduct of its business that render its further transaction of business in this State hazardous or injurious to its clients or to the public;
2. Has failed to pay any judgment rendered against it within 60 days after the judgment has become final;

3. Has violated any lawful rule or order of the Commissioner or any provision of the laws of this State;

4. Has, without just cause, refused or failed to perform services arising under its contracts with clients;

5. Has been convicted of, or has entered a plea of guilty or nolo contendere to a felony or crime of the first, second or third degree in this State, without regard to whether adjudication was withheld; or

6. Has had its credential as a third party billing service suspended, revoked or non-renewed for cause in another State.

(b) If the Commissioner finds that one or more grounds exist for the suspension or revocation of a certification issued under the Act, the Commissioner may, in lieu of or in addition to suspension or revocation, impose a fine upon the third party billing service.

11:23-5.10 Civil Penalties

The Commissioner may, upon notice and hearing, assess a civil administrative penalty in an amount not less than \$250.00 nor more than \$5,000 for each day that a third party billing service is in violation of the Act. A penalty imposed by the Commissioner pursuant to this section may be in lieu of, or in addition to, suspension or revocation of a certification pursuant to the Act. A penalty may be recovered in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c. 274 (N.J.S.A. 2A:58-10 et seq.).

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