

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

**Health Benefit Plans
Electronic Receipt and Transmission of Health Insurance Claims**

**Actuarial Services
Minimum Standards for Individual Health Insurance**

Proposed Amendments: N.J.A.C. 11:4-16.7 and 11:22-3, Appendix Exhibits 1A and 1B

Authorized By: Donald Bryan, Acting Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17B:30-23 and 17B:26-45

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

Proposal Number: PRN 2005-242

Submit written comments by September 3, 2005 to:

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The agency proposal follows:

Summary

In August 2003, the Department of Health and Senior Services (DHSS) and the Department of Banking and Insurance (DOBI) jointly issued Bulletin 2003-01 to all licensed health insurance carriers in the State. The bulletin confirmed that the collection of demographic data by carriers from policyholders, certificate holders,

subscribers, enrollees or members (collectively "covered lives") is relevant in attempting to address disparities in health, health care outcomes, and access to health care services. The bulletin also confirmed that the use of various types of demographic data may enable carriers, particularly those with managed care products, to identify certain classes of covered lives that may be at greater risk for certain diseases or conditions, and focus education, preventive care, and disease and case management services in order to prevent, treat or mitigate the effects of those diseases or conditions. Accordingly, the Bulletin encouraged carriers to collect whatever demographic data they believed necessary to pursue these, and other, permissible purposes.

Bulletin 2003-01 also addressed existing restrictions against, or limitations on, the collection or use of such demographic data. N.J.A.C. 11:4-16.7(a)1, applicable to all individual health insurance application forms, prohibits the inclusion of any provisions, statements or questions pertaining to race, creed, color, national origin or ancestry of the proposed insured. Also, application forms promulgated by the Individual Health Coverage Program (IHC) and the Small Employer Health Benefits Program (SEH) for their standard health benefits plans do not include questions regarding race, creed, color, national origin or ancestry. Similar restrictions do not apply, however, for the non-SEH group market for medical or hospital expense coverage, or the group market for other types of health insurance. Moreover, collection of such data through avenues other than application forms is not prohibited in any markets.

New Jersey law restricts the use of demographic data collected in the application and underwriting process in certain markets. N.J.S.A. 17B:30-12b prohibits discrimination against individuals and groups because of race, creed, color, national origin or ancestry in the issuance, withholding, extension or renewal of any policy of life or health insurance or annuity; in the fixing of the rates, terms or conditions of such policies or contracts; or in the issuance or acceptance of any application for such policies or contracts. That statute additionally prohibits any unfair discrimination between individuals of the same class and of essentially the same hazard in the premium, policy fees, rates, dividends or other benefits payable, or in any other terms and conditions relating to such policies or contracts. N.J.S.A. 17:29B-4(7)(d) prohibits discrimination in the use of any form of policy of insurance which expresses, directly or indirectly, any limitation or discrimination as to race, creed, color, national origin or ancestry or any intent to make such limitation or discrimination.

Additional State and Federal restrictions may apply to the use of specific types of demographic data. For instance, while requirements for community rating or modified community rating prevent or limit the use of age and gender as rating factors in some markets, their use may be valid rating factors in other markets. State and Federal laws also apply with respect to the dissemination of data, particularly if health information and personal identifiers can be linked.

Consistent with the purpose of Bulletin 2003-01 to encourage the collection of demographic data, DHSS and DOBI have determined that it would be appropriate to permit health insurance carriers to elicit such data in their application forms, and give

enrollees and applicants the option to provide such data. Accordingly, these proposed amendments amend the existing application/change request forms for the group and individual health insurance markets, located in the Appendix to N.J.A.C. 11:22-3 as Exhibits 1A and 1B respectively, by including a section that would permit carriers to elicit racial and ethnic data on enrollees and applicants. Simultaneously, N.J.A.C. 11:4-16.7 is proposed to be amended to permit individual hospital-medical insurance application forms to include a provision, statement or question pertaining to race or ethnicity, for the purpose of collecting demographic data.

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 will benefit the public because collection of racial and ethnic data from health insurance applicants and enrollees will enable carriers to more accurately determine certain classes of covered lives that may be at greater risk for certain diseases or conditions, and focus services toward prevention, early detection, treatment and mitigation of the effects of those diseases or conditions.

Economic Impact

Carriers may experience long-term economic benefits from acquiring racial and ethnic data from applicants and enrollees because they may be able to more precisely

allocate resources toward the prevention, early detection, treatment and mitigation of those diseases and conditions for which certain classes of covered lives may be at a greater risk. Prevention and early intervention is generally less expensive than treatment of conditions and diseases that have reached an advanced stage. In addition, consumers may experience economic benefits by incurring lower deductibles and copayments.

Carriers will be required to bear the cost of collecting and maintaining the racial and ethnic data requested on the application and enrollment forms. However, the cost to carriers of revising their application and enrollment forms and maintaining the data obtained should be minimal, and outweighed by the long-term economic benefits carriers are expected to accrue.

Federal Standards Statement

Federal law neither prohibits nor mandates the collection of racial and ethnic data by health carriers. Accordingly, a Federal standards analysis is not required because the proposed amendments are not subject to any Federal standards or requirements.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of these proposed amendments.

Agriculture Industry Impact

The proposed amendments will not have any impact on the agriculture industry in New Jersey

Regulatory Flexibility Analysis

The proposed amendment to N.J.A.C. 11:4-16.7 permitting individual hospital-medical insurance application forms to include a provision, statement or question pertaining to race or ethnicity, applies to all individual health carriers. The proposed amendments to the Appendix of N.J.A.C. 11:22-3 will apply to all hospital service corporations, medical service corporations, health service corporations, individual and group health insurers, health maintenance organizations, dental service corporations, dental plan organizations and prepaid prescription service organizations. Some of these entities are "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Because N.J.S.A. 17B:30-23 et seq., the Health Information Electronic Data Interchange Technology Act (the HINT Act), does not allow for any small business exception, all entities, regardless of size, will be required to comply with these requirements.

These proposed amendments will require carriers to include a question on their application and enrollment forms intended to collect racial and ethnic data on applicants and enrollees, but will not require the use of any additional professional services. To ensure consistency and uniformity in the use of application/change request forms and enrollment/change request forms in the individual and group health insurance markets,

no differentiation in compliance requirements is provided based on business size. Carriers' compliance costs are discussed in the Economic Impact Statement above.

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 proposed amendment to N.J.A.C. 11:4-16.7 follows (additions indicated in boldface **thus**):

SUBCHAPTER 16. MINIMUM STANDARDS FOR INDIVIDUAL HEALTH INSURANCE

11:4-16.7 Application forms

(a) Application forms shall not include provisions, statements or questions that:

1. Pertain to race, creed, color, national origin or ancestry of the proposed insured, **except for hospital-medical insurance application forms for the purpose of collecting demographic data. No application form may include any provision or statement the effect of which is to discriminate against the proposed insured on the basis of race, creed, color, or national ancestry in a manner prohibited by law.**

2. – 4. (No change.)

(b) – (e) (No change.)

Full text of the proposed amendments to N.J.A.C. 11:22-3, Appendix Exhibits 1A and 1B follows (additions indicated in boldface italics ***thus***; deletions indicated in cursive brackets {thus}):

SUBCHAPTER 3. ELECTRONIC RECEIPT AND TRANSMISSION OF HEALTH CARE
CLAIMS

APPENDIX

inoregs/bbenroll

APPENDIX EXHIBIT 1A

[Carrier Logo] **Enrollment/Change Request**

[Carrier Name] [Employer]ⁱ Group Information – To be completed by [Employer]
Group Name [Group Number Class Code]ⁱⁱ

A. – [G] (No change.)

***[H] Race/Ethnicity (* RESPONDING TO THIS QUESTION IS OPTIONAL AND NOT REQUIRED)**

Choose a category that most closely describes you:

a. American Indian or Alaskan Native

b. Asian or Pacific Islander

c. Black, not of Hispanic origin

d. Hispanic

e. White, not of Hispanic origin

Recodify existing {H} and {I} as **[I] and [J]** (No change in text.)

Instructions

[Employer]

- Complete the [Employer] Group information [in the upper right corner] of the form.
- Section A – Type of Activity: Check boxes indicating reason(s) for submitting application.
- Complete Section **[I]** **[J]** – [Employer] Verification [in the lower right corner] of the form.
 - [Employer] must complete this section for all new enrollments, coverage changes and terminations.
 - [Employer] must sign and date the Enrollment/Change Request in order for it to be processed.

[Employee] – Complete Sections [B-H]

Section B – [G] (No change.)

Section [H] - Race/Ethnicity

• **Responding to this question is optional and NOT required.**

• **Complete this section for all new enrollments.**

Recodify existing Section [H] and [I] as **[J] and [K]** (No change in text.)

Conditions of Enrollment

[Applicant] Acknowledgement and Agreements

On behalf of myself and the dependents listed [on the reverse side] I agree to or with the following:

1. – 4. (No change.)

Misrepresentation

5. (No change.)

1. – 24. (No change.)

[Carrier Logo] **Application/Change Request**

[Carrier Name]

A – [H] (No change.)

***[I] Race/Ethnicity (*RESPONDING TO THIS QUESTION IS OPTIONAL AND NOT REQUIRED)**

Choose a category that most closely describes you:

a. American Indian or Alaskan Native

b. Asian or Pacific Islander

c. Black, not of Hispanic origin

d. Hispanic

e. White, not of Hispanic origin

Recodify existing [I] – [K] as **[J] – [L]** (No change in text.)

1. – 5. (No change.)

Instructions

Sections A – [G] (No change.)

Section [H] - Race/Ethnicity

• Responding to this question is optional and NOT required.

Complete this section for all new enrollments.

Sections [[J]] [K] – (No change.)

Conditions of Enrollment

[Applicant] Acknowledgement and Agreements

On behalf of myself and the dependents listed [on the reverse side], I agree to or with the following:

1. – 4. (No change.)

Misrepresentation

1. – 20. (No change.)

