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INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

Health Care Quality Act Application to Insurance Companies, Health Service Corporations, Hospital Service Corporations, and Medical Service Corporations

Readoption with Amendments: N.J.A.C. 11:24A

Adopted Repeals: N.J.A.C. 11:24A-1.3 and 11:24A Appendix

Proposed: December 6, 2010 at 42 N.J.R. 2920(a).

Adopted: February 28, 2011 by Thomas B. Considine, Commissioner, New Jersey Department of Banking and Insurance.

Filed: March 1, 2011 as R. 2011 d. 097, **without change**.

Authority: N.J.S.A. 26:2S-1 et seq.

Effective Date: March 1, 2011, Readoption;

April 4, 2011, Amendments and Repeals.

Expiration Date: March 1, 2016.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Analysis

Covered persons have a right to appeal certain determinations by carriers pursuant to both Federal and State law. The United States Department of Labor (USDOL) proposed rules at 29 CFR 2560-503-1, pursuant to sections 503 and 505 of

Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1133 and 1135, requiring that "employee benefit plan," as defined in ERISA, have in place reasonable claims procedures. The regulation became effective July 1, 2002 (and all coverage subject to the regulations was to be in compliance no later than January 2003). In accordance with the Federal regulation, a principal tenet for demonstrating a reasonable claim procedure is the ability of the claimant to appeal an adverse claim determination. Because of the manner in which the Federal regulations define "claim" and "group health plan," the Federal regulations and New Jersey's rules requiring carriers subject to the HCQA (including HMOs) to establish an internal UM appeal system, overlap in terms of their applicability, although there are areas in which each law applies distinctly. For instance, the Federal regulations do not apply to any coverage not otherwise subject to ERISA, while New Jersey rules do, and conversely, the State rules apply only to those products defined as health benefits plans, while the Federal regulations apply to other types of health coverage (for instance, disability policies).

The Federal regulations do not preempt State rules, except when compliance with the State rules would make it impossible for the regulated entity to comply with the Federal regulations as well. Paragraph 1e of New Jersey's Executive Order No. 2 signed by Governor Chris Christie on January 20, 2010, permits New Jersey State agency rules to exceed the requirements of Federal law when required by State statute or in circumstances where exceeding the requirements of Federal law or regulation is necessary in order to achieve a New Jersey specific public policy goal. N.J.A.C. 11:24A

currently contains some standards that are more stringent than the current USDOL regulations in order to strike a balance between those carriers that have to struggle to make their systems compliant with both the State and Federal laws, and those carriers that would not need to change their systems at all because of the Federal regulations. Accordingly, the current standards contained in N.J.A.C. 11:24A enable carriers to comply with those USDOL regulations and with the HCQA. Further, because the more stringent standards of N.J.A.C. 11:24A have been in place in New Jersey since at least May of 2000 (since 1997 with respect to HMOs), the Department does not consider the more stringent features as representing any particular hardship for carriers doing business in the State. However, as the Department stated in the Notice of Proposal, on July 22, 2010, the Obama Administration released interim final rules that allow patient appeals of health insurance coverage decisions as required under the Patient Protection and Affordable Care Act (PPACA) (Public Law 111-148, enacted on March 23, 2010) and the Health Care and Education Reconciliation Act (Reconciliation Act) (Public Law 111-152, enacted on March 30, 2010). The Federal Departments of Health and Human Services, Treasury, and Labor are issuing regulations to implement the PPACA and the Reconciliation Act. Many of the rules currently included in N.J.A.C. 11:24A, while more stringent than current USDOL regulations, are less stringent than the new Federal requirements, and will need to be strengthened to comply with them.

While the Federal interim final rules implementing some of the requirements of the PPACA and the Reconciliation Act provide states with ample time to enact legislation and/or adopt rules that comply with the Federal requirements, other Federal

requirements become effective more immediately. Consequently, the Department has amended N.J.A.C. 11:24A-4.11(b)2, which is in conflict with the Federal interim final rules that became effective on September 23, 2010 prohibiting preauthorization for emergency and/or urgent care services (See 26 CFR Parts 54 and 602, 29 CFR Part 2590 and 45 CFR Parts 144, 146 and 147, Requirements for Group Health Plans and Health Insurance Issuers Under the Patient Protection and Affordable Care Act Relating to Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections; Final Rule and Proposed Rule, June 28, 2010). As stated in its notice of proposal, the Department also intends to propose further amendments to this chapter in the future to comply with the more rigorous Federal requirements.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 11:24A.

Full text of the adopted amendments follows:

TEXT