

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

Dental Services

Readoption with Amendments: N.J.A.C. 11:10

Adopted Repeals: N.J.A.C. 11:10-1.13 and 11:10 Appendices A and B

Proposed: January 18, 2011 at 43 N.J.R. 124(a).

Adopted: July 29, 2011 by Thomas B. Considine, Commissioner, Department of Banking and Insurance.

Filed: August 1, 2011 as R. 2011 d. 227, **with substantial changes** not

requiring additional notice and opportunity for comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1, 17:1-15(e), 17:48D-1 et seq., 17B:26-44.4 et seq.,

17:48C-18.1 et seq. and 17B:27-51.10a et seq.

Effective Date: August 1, 2011, Readoption;

September 6, 2011, Amendments and Repeals.

Expiration Date: August 1, 2018.

Summary of Public Comments and Agency Responses:

The Department received comments from the New Jersey Association of Health Plans (NJAHPP), Aetna and Delta Dental of New Jersey, Inc.

COMMENT 1: One commenter stated that proposed N.J.A.C. 11:10-1.4(f) states that "Every DPO shall report to the Commissioner the name and address of, and the

amount of any fee paid to, a finder within 30 days of the use or employment of the finder." The commenter requested that the Department provide examples of the types of payments that might occur between a dental plan organization (DPO) and a finder outside of the more usual compensation a producer could receive.

RESPONSE: Because the 2005 legislative amendments did not repeal any of the provisions relating to finders or finder fees, the Department determined that it would codify the long-standing finder fee requirements summarized above. While the Department cannot provide specific examples of payments that might be made by a DPO to a finder, such payments would include fee(s) of any nature paid to a finder as that term is defined in the statute and this proposed chapter readoption.

COMMENT 2: The commenters stated that proposed N.J.A.C. 11:10-1.5(d)1i requires that agreements with DPO dentists include "*the* capitation payment schedule," but carriers often have many different capitation schedules. The commenters requested that the Department provide carriers some flexibility in meeting this requirement to avoid onerous and arguably unhelpful filings. Two of the commenters suggested permitting carriers to provide this information via periodic (for example, monthly) member payment rosters. One commenter explained that it currently provides its DPO dentists in advance with a "range" of capitation payments based on rate code (single, two party, etc.). This informs the DPO dentist of the pertinent range of payment he or she will receive and allows for adjustment of the capitation rates within that range based on the plan design. The DPO dentist receives payments within the capitation range explained in the monthly capitation roster on a patient-specific

basis. Another commenter suggested that, alternatively, the Department consider permitting DPOs to provide an average or weighted average rate upon request.

RESPONSE: The Department agrees with the commenter, and is revising the proposed language to read (additions in boldface): "[T]he capitation payment schedule(s), or the method by which the DPO will provide dentists with this information (for example, periodic member payment rosters)."

COMMENT 3: Two commenters requested that, if an agreement is unilaterally terminated pursuant to proposed N.J.A.C. 11:10-1.5(d)6, DPOs be permitted to include a provision in their agreements with dentists that would require the dentist to treat existing covered persons on the capitation basis until their coverage renewal date. Such a provision would protect covered persons and reduce or eliminate consumer complaints concerning network dentists leaving the network while their coverage remains in effect. One commenter requested that this section include an exemption to the 90-day notice of termination requirement in the event a dental provider has committed fraud or it is determined that the quality of services provided by a contracted provider drops below the standard of care.

RESPONSE: While the Department agrees with the commenter that the rules should contain a continuity of care provision, such a provision cannot be included in this readoption because it would require additional notice and opportunity for comment pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The Department will propose such a provision in the future in a separate rule proposal.

The Department agrees with the commenter that a DPO should be permitted to

unilaterally terminate an agreement with a dentist without providing at least 90 days' notice if there has been a determination that the dentist has committed fraud or represents an imminent danger to a covered person or the public health, safety and welfare. Clearly, it would not be in the best interest of a dentist's patients or the public at large to permit a dentist who has engaged in such activities to continue to practice for any additional length of time and to continue to reap the benefits from his or her practice. Accordingly, the Department is making this clarification by revising the language at N.J.A.C. 11:10-1.5(d)6. The Department will also propose in the future additional language, similar to that contained in other Department rules governing other types of health insurers, that will require DPOs to report to the appropriate regulatory agencies determinations of fraud or imminent danger to a covered person or the public health, safety and welfare.

COMMENT 4: One commenter questioned the language at proposed N.J.A.C. 11:10-1.5(d)10 requiring that agreements with dentists include "provisions concerning payment of claims pursuant to N.J.A.C. 11:22." The commenter explained that Chapter 22 addresses a broad range of requirements for health benefits plans, including things not related to the prompt payment of claims (for example, health wellness promotion and organized delivery systems). The commenter requested that the rule be modified to reference N.J.A.C. 11:22-1.1 to 1.10 (prompt payment of claims) rather than all of Chapter 22, and that the Department provide guidance regarding precisely what provisions from the prompt payment of claims rules need to be included in the agreements.

RESPONSE: The Department agrees with the commenter, and is revising N.J.A.C. 11:10-1.5(d)10 to correctly reference N.J.A.C. 11:22-1. The Department intended that DPOs include in their agreements with dentists a summary of the requirements set forth in the prompt payment of claims rules, including, but not limited to, timeframes for acknowledging receipt of claims, claim submission requirements, timeframes for payment of claims, procedures for addressing denied and disputed claims, requirements regarding prompt payment of capitation payments, and the processes for internal and external appeals related to payment of claims.

COMMENT 5: One commenter requested that the following language proposed to be deleted at N.J.A.C. 11:10-1.6(i) be retained so that a DPO may still arrange for the provision of services with another duly authorized insurer: "A DPO may also arrange for the provision of dental services on a fee-for-service, expense incurred or indemnity basis by purchasing coverage or such service from a duly authorized insurer, or a hospital, medical, dental or health service corporation."

RESPONSE: The Department agrees with the commenter, and is declining to adopt the proposed revision so as to retain the language referenced by the commenter. The language that was deleted by the Department required dentists to cover dental services exclusively on a capitation basis. However, P.L. 2005, c. 38 permitted other methods of payment. Therefore, while it was appropriate for the Department to delete the language prohibiting any method(s) of payment other than capitation, it is also appropriate to maintain the language that the commenter has requested remain in place.

COMMENT 6: Two commenters raised concerns with proposed N.J.A.C. 11:10-1.12(a) and (b). The commenters stated that subsection (a) appears to require an annual filing of premiums with the Department. For purposes of efficiency and conserving costs, the commenters requested that the Department permit DPOs to annually file adjustments to the premium rating methodology on file (for example, to update dental trend), or, if there were no changes, to file a statement to that effect. The commenters stated that subsection (b) appears to require the annual refiling of the information and documentation identified in paragraphs included in this subsection. The commenters again requested that the Department permit an underlying filing to remain in place with revisions being updated. One commenter noted that it appeared that the Department anticipated this by addressing "revisions" separately in subparagraph (b)1ix. The commenter further requested confirmation that the DPO must file the detailed information in paragraph (b)2 as it relates to revisions to previously filed rates.

RESPONSE: The language at N.J.A.C. 11:10-1.12(a) states that "A DPO shall file a schedule of premiums at least annually. Every new or *revised* schedule of premiums shall be filed . . ." (emphasis added) This language in subsection (a) also applies to subsection (b), which sets forth the required contents of the filing. Accordingly, both subsections (a) and (b) are intended to apply to the filing of only new or revised schedules of premiums. Further, the Department will accept written confirmation from the DPO that there have been no changes to the schedule of

premiums currently on file with the Department, which should reference the filing date of such schedule.

Federal Standards Statement

A Federal standards analysis is not required because the readopted rules and adopted amendments and repeals are not subject to any Federal requirements.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 11:10.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

11:10-1.5 Written agreements with dentists

(a) – (c) (No change from proposal.)

(d) Agreements with dentists shall include:

1. The amount and method of compensation and the services and supplies to be provided, including:

i. The capitation payment schedule ***(s), or the method by which the DPO will provide dentists with this information (for example, periodic member payment rosters)***;

ii. and iii. (No change from proposal.)

2. – 5. (No change from proposal.)

6. A provision specifying the date and term of the agreement, including the right of either party to terminate the agreement by providing written notice at least

90 days prior to the date of termination* **unless a determination has been made by the DPO that the dentist has committed fraud or represents an imminent danger to a covered person or the public health, safety and welfare***;

7. – 9. (No change from proposal.)

10. Provisions concerning payment of claims pursuant to N.J.A.C.

11:22*-1*.

11:10-1.6 Evidence of coverage and group contracts

(a) through (h) (No change from proposal.)

*** (i) A DPO may arrange for the provision of dental services on a fee-for service, expense incurred or indemnity basis by purchasing coverage or such service from a duly authorized insurer, or a hospital, medical, dental or health service corporation. ***

Recodify proposed (i) and (j) and *** (j) and (k) *** (No change in text from proposal.)