

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

Third Party Administrators of Health Benefits and Third Party Billing Services

Readoption with Amendments: N.J.A.C. 11:23

Proposed: August 5, 2013, at 45 N.J.R. 1893(a).

Adopted: June 25, 2014, by Kenneth E. Kobylowski, Commissioner, Department of Banking and Insurance.

Filed: June 26, 2014, as R.2014 d.121, **without change.**

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and 17B:27B-1 et seq.

Effective Date: June 26, 2014, Readoption;
July 21, 2014, Amendments.

Expiration Date: June 26, 2021.

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) received two timely written comments from the Medical Society of New Jersey (MSNJ) and the New Jersey Society of Optometric Physicians (NJSOP).

COMMENT: MSNJ stated its support of the proposal's amendments contained in N.J.A.C. 11:23-2.4(g) and 2.6 that permit strengthened oversight and review of applications and investigations of third party administrators (TPAs). MSNJ also supports the amendment to N.J.A.C. 11:23-5.4(b) that permits the Department to seek any additional information it deems

necessary to consider the application of a third-party billing service. Further, MSNJ supports the Department's readoption of N.J.A.C. 11:23-3.1 that requires that the agreement between the payer and the TPA be in writing, and N.J.A.C. 11:23-3.3 that prohibits TPAs who adjudicate claims from basing compensation solely on the number of claims denied or adjusted downward.

RESPONSE: The Department thanks MSNJ for their support.

COMMENT: MSNJ questions whether compensation for claims denial is an appropriate measure for compensation. MSNJ stated that it would support a compensation method based primarily on accuracy and timeliness of claims adjudication or, to the extent that a TPA is making utilization management decisions, a compensation method based on the accuracy of the application of clinical criteria and the transparency with which the criteria and decision-making is conveyed to physicians.

RESPONSE: N.J.A.C. 11:23-3.3 prohibits compensation based solely on the number or the amount of claims denied or adjusted downward by the administrator. N.J.A.C. 11:23-3.3 further states that "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." Accordingly, a compensation method such as suggested by MSNJ would be allowed under the terms of N.J.A.C. 11:23-3.3.

COMMENT: MSNJ stated that they have long held the concern that TPAs may be monetarily incented to deny claims even when the agreement between the payer and the TPA may not

support such a denial, causing a negative impact on physicians whose claims are denied. Accordingly, MSNJ urges the Department to review credible complaints of violations, investigate, and when appropriate enforce the provisions.

RESPONSE: The Department will continue to review and investigate all credible complaints of violations that it receives concerning the insurance laws and regulations of the State of New Jersey and will continue to enforce those laws and regulations.

COMMENT: NJSOP stated that TPAs include limited service “stand-alone vision plans” and that there is a lack of reliable information concerning the size of the third party vision care market in New Jersey. The commenter also noted that information is not available on how many eye examinations are performed by these entities or on how much eye care is delivered by “third party contractors.” The NJSOP believes such entities should be required to report more information to the State about the care they deliver to its citizens.

RESPONSE: These rules concern TPAs, which are persons or entities that process and pay claims on behalf of a benefits payer. The rules do not concern third party health care providers. While TPAs may administer, that is, process and pay, the claims of health plans, TPAs are not third party contractors who provide vision services. Thus, the comments regarding the reporting obligations of such providers on the vision care they provide are beyond the scope of this proposal.

COMMENT: NJSOP stated that they wished to be on record as being generally in agreement with the proposed rule as written, noting that the proposed rule with amendments “improves the transparency in reporting which will provide better information about the delivery of health care by these third party administrators, which include Stand Alone Vision Plans.”

RESPONSE: The Department thanks NJSOP for their support. However, as noted above, TPAs do not provide health care. Consequently, the rules being readopted with amendments do not address “the delivery of health care” by third party administrators as was referenced in the comment.

Federal Standards Statement

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

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 11:23.

Full text of the adopted amendments follows:

TEXT