

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Organized Delivery Systems

Application Procedures; Net Worth, Deposits and Bond

Adopted Amendments: N.J.A.C. 11:22-4.5 and 4.8

Proposed: October 21, 2002 at 34 N.J.R. 3593(a)

Adopted: April 10, 2003 by Holly C. Bakke, Commissioner,
Department of Banking and Insurance

Filed: April 10, 2003 as R. 2003 d.186, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17:48H-1 et seq.

Effective Date: May 5, 2003

Expiration Date: November 6, 2005

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance ("Department") timely received comments from the following:

1. Magellan Behavioral Health, Inc.;
2. Horizon Blue Cross/Blue Shield; and
3. Carrier Clinic.

COMMENT: One commenter generally supported the proposed amendments.

RESPONSE: The Department appreciates the support of its proposal.

COMMENT: One commenter, while supporting the changes set forth in the proposed amendments regarding the phase-in period of 48 months for the minimum net worth requirement,

continued to express concern regarding the deposit requirement. The commenter suggested that the amount of the deposit also be phased in over a 48-month period, consistent with the time period for minimum net worth. The commenter stated that in most cases, the amount of the required deposit will exceed the amount of net worth. The commenter stated that without the same phase-in period for the deposit requirement, the phase-in period for the net worth requirement would provide little ability to accumulate net-worth based upon the organized delivery system's (ODS) operations.

The commenter further stated that while N.J.A.C. 11:22-4.8 permits the Department to adjust the net worth requirement based upon limitations on the company's financial risk, there is no provision for a like adjustment to the deposit requirement. The commenter suggested that the Department permit an adjustment to the deposit, as well as to the net worth requirements, based upon the particular facts and circumstances that limit a company's risks. Without application of the adjustment, the commenter believed that there would be unnecessary duplication of capital requirements.

The commenter further repeated and supported its prior comments on N.J.A.C. 11:22-4.

RESPONSE: Upon review, the Department has determined not to change this provision. Initially, to the extent that the commenter incorporates and repeats comments previously submitted on proposed N.J.A.C. 11:22-4, these comments are outside the scope of this proposal, and the Department reiterates its responses to those comments set forth in the notice of adoption to N.J.A.C. 11:22-4 in the October 21, 2002 issue of the New Jersey Register, 34 N.J.R. 3607(a).

With respect to the comments on the proposed amendments, the Department reiterates that the net worth and deposit requirements implement the intent of the statute, N.J.S.A. 17:48H-

1 et seq., with respect to the licensure of an ODS, by helping to ensure that an ODS that assumes financial risk from a carrier has the financial ability to meet its contractual obligations. As was noted in its response to comments on the rules when originally proposed, the Department agrees that it is reasonable to provide for the phasing in of the net worth requirements over 48 months, and of any deposit requirements above the minimum \$25,000 over two years, similar to that provided for health maintenance organizations (HMO) under N.J.A.C. 8:38-11.1 and 11.4, respectively.

With respect to an adjustment of the deposit requirement, the Department believes that the rules do provide some variation in the deposit requirements, as the amount of the deposit is based on the amount of the ODS's quarterly compensation, which is indicative of business size and the risk assumed, and which shall be adjusted annually in accordance with changes in the Consumer Price Index. These provisions reflect the statute at N.J.S.A. 17:48H-20. In addition, the rules permit a waiver of the net worth and deposit requirement insofar as the licensure requirement is waived if the ODS assumes risk that is de minimis, pursuant to N.J.A.C. 11:22-4.3(b). The Department will continue to evaluate other factors that may impact the ODS's financial risk to determine whether amendments to the determination of the deposit requirements are appropriate.

Finally, the Department reiterates that the rules do not require duplicative deposit and net worth in that the amounts required to be maintained as a deposit are considered assets of the ODS and thus would be counted in determining its net worth.

COMMENT: One commenter believed that the financial requirements are onerous for any potential ODS.

RESPONSE: The Department believes that the financial requirements are reasonable and appropriate for the reasons stated above and in response to comments in the notice of adoption of N.J.A.C. 11:22-4 at 34 N.J.R. 3607(a).

COMMENT: One commenter continued to express concern with N.J.A.C. 11:22-4.5(c), and requested that the Department review applications throughout the calendar year. The commenter stated that if an application is filed after November 1 of any year, the Department should not wait until April 1 of the following year to begin its review because this would delay the ability of the parties to contract or implement contracts. In addition, the commenter questioned how this would affect an ODS that files on a fiscal year basis, as opposed to those that file on a calendar year basis. The commenter suggested that the Department request the most recent audited financial statement with an associated certification from the auditing company. The commenter stated that approval could be qualified as “temporary” until the ODS ends its fiscal or calendar year and finalizes its annual audited financial statements and submits information for “final approval.”

RESPONSE: Upon review, the Department has determined not to change this provision. The Department believes that the amendments address the commenter’s concerns. The Department initially notes that the rule as amended does not require that the Department delay review until April 1 of each year with respect to applications received after November 1. However, the Department may defer the review of an application accepted after November 1 until the most recent financial information becomes available if, based on the information provided in the

application, the Department determines that it is necessary to review more recent financial information to evaluate properly the applicant's financial position. The change suggested by the commenter would not fulfill the Department's need to properly evaluate an applicant's financial position. While the Department would have received the most recent audited annual statement, the Department is concerned that the applicant's position may change since the time of filing the initial application.

With respect to the comment that the rules do not address an ODS that files on a fiscal year basis rather than a calendar year basis, the Department notes that all ODS financial statements must be filed on a calendar year basis pursuant to N.J.A.C. 11:22-4.9.

COMMENT: One commenter requested confirmation that the phrase "all of its contracts" in N.J.A.C. 11:22-4.8(a)1 refers to New Jersey and out-of-State contracts. The commenter further requested that the Department provide an illustration of the calculation/formula it is utilizing under N.J.A.C. 11:22-4.8(a)2 with respect to payments made on a "managed hospital payment basis."

RESPONSE: The Department initially notes that these provisions were not proposed for change and, therefore, the comments are outside the scope of this proposal. However, the Department notes that the phrase "all of its contracts" refers to all of the ODS's business, both in-State and out-of-State. Moreover, it is not clear to what "calculation/formula" the commenter refers. The calculation is set forth clearly in the rules, which is based on the requirements for HMOs. The term "managed hospital payment basis" thus has the same meaning as in the HMO rules as set forth in N.J.A.C. 8:38-1.2.

COMMENT: One commenter expressed concern with the reduction of the net worth of an ODS from six percent to two percent of the annual compensation. The commenter stated that although this proposed change is consistent with the HMO rules, ODSs are new entities heretofore not regulated, and thus should demonstrate their financial viability before a more flexible financial standard may apply. If an ODS does not maintain adequate financial reserves, it will ultimately affect the quality and availability of appropriate services to patients.

The commenter also expressed concern with the 48-month phase-in and two-year phase-in for net worth and certain deposit requirements, respectively. The commenter stated that health care providers have suffered great financial burdens due to recent insolvencies of ODSs and similar entities. The commenter stated that hospitals and other health care providers require the assurance that entities with which they contract are appropriately funded and have sufficient reserves to pay their claims. The commenter stated that net worth serves as a barometer of an ODS's financial viability and that a 48-month phase-in may prohibit a provider or the State from assessing an ODS's potential longevity. The commenter stated that providers would be better assured that obligations would be fulfilled in the event of the insolvency of the ODS if the Department anticipates that an ODS will cover its claims under an insurance contract required as part of the plan for insolvency pursuant to N.J.A.C. 11:22-4.11, rather than by drawing on deposits and other cash reserves.

The commenter also stated that an ODS is not an HMO, which is required to pay into an insolvency fund to provide additional protection to subscribers and providers.

RESPONSE: Upon review of the commenter's concerns, the Department has determined not to change this provision. The Department continues to believe that the net worth and deposit requirements are reasonable and appropriate, consistent with the requirements applicable to HMOs. The Department does not believe that financial requirements should be in excess of those applicable to an entity from which the risk is assumed because such an approach could preclude the utilization of ODS's by carriers, and would not implement the intent of the Legislature as expressed in N.J.S.A. 17:48H-1 et seq. Moreover, the Department notes that N.J.A.C. 11:22-4.8(i) provides that an ODS that accepts risk in an amount represented by 50 percent or more of any carrier's consideration received to provide services or benefits, shall satisfy all net worth and financial requirements set forth in N.J.A.C. 8:38-11. Accordingly, to the extent an ODS assumes more than 50 percent of a carrier's risk, it must satisfy all of the net worth and deposit requirements of an HMO.

The Department will be in a position to determine an ODS's financial position through its review of audited financial statements and quarterly reports. The Department also notes that, as the commenter noted, an ODS must establish a plan to provide for the continuation of its services in the event of its insolvency in accordance with N.J.A.C. 11:22-4.11. This could be accomplished through insurance or other arrangements acceptable to the Commissioner. However, the rehabilitation or liquidation of an ODS is governed under N.J.S.A. 17B:32-31 et seq. The payment of any claims, and the priority of those payments would be governed by that statute.

Further, these amendments appropriately permit a phase-in so that these entities are provided a reasonable time to marshal the minimum required amounts, during which time they may continue to operate. Absent the phase-in, an ODS currently contracting with a carrier might

not be able to continue to provide its services, thereby disrupting services to patients and relationships with providers.

Finally, the commenter has apparently misconstrued the requirements of HMOs to pay into an insolvency fund. The Department notes that the New Jersey Insolvent Health Maintenance Organization Assistance Association, established pursuant to N.J.S.A. 17B:32B-1 et seq., relates only to contracts involving enrollees or members of HIP Health Plan of New Jersey, Inc. or American Preferred Provider Plan, Inc.

Federal Standards Statement

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

Full text of the adoption follows:

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