

CHAPTER 23

THIRD PARTY ADMINISTRATORS

Authority

N.J.S.A. 17:1-8.2, 17:1-15e, and 17B:27B-1 et seq.

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R.2005 d.113, effective April 4, 2005.
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Chapter Expiration Date

Pursuant to Executive Order No. 1(2010), the chapter expiration date is extended from April 4, 2010 until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule is readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Chapter Historical Note

Chapter 23, Third Party Administrators, was adopted as R.2005 d.113, effective April 4, 2005. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

11:23-1.1 Purpose and scope

(a) This chapter sets forth the licensing and registration requirements of third party administrators of health benefits plans and the certification requirement of third party billing services in accordance with the provisions of N.J.S.A. 17B:27B-1 et seq.

(b) This chapter applies to all persons who act as, offer to act as, or hold themselves out to be, a third party administrator of health benefits plans or third party billing service in this State.

11:23-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Act” means N.J.S.A. 17B:27B-1 et seq., an act concerning third party administrators of health benefits plans and third party billing services.

“Affiliate” means any company that controls, is controlled by, or is under common control with another company.

“Benefits payer” means an insurer authorized to issue health or dental benefits plans in this State, or any other person who undertakes to provide and assumes financial risk for the payment of health or dental benefits and is obligated to pay claims for health or dental benefits to providers or other claimants.

“Client” means a health care provider that contracts with a third party billing service to remit claims to benefits payers on behalf of the provider or other claimant.

“Commissioner” means the Commissioner of Banking and Insurance.

“Control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through

the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person.

“Department” means the New Jersey Department of Banking and Insurance.

“Enrollee” means a person entitled to receive benefits under a health benefits plan.

“Health benefits plan” means a benefits plan which pays or provides hospital and medical expense or dental benefits for covered services. For the purposes of this chapter, health benefits shall not include the following plans, policies or contracts: accident only, credit, disability, long-term care, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) supplement coverage, coverage arising out of a worker’s compensation or similar law, automobile medical payment insurance, personal injury protection insurance issued pursuant to N.J.S.A. 39:6A-1 et seq. or hospital confinement indemnity coverage.

“Health care provider” or “provider” means an individual or entity, including for the purposes of this chapter, a group practice or faculty practice, which provides a covered benefit or service.

“Impaired third party administrator” means a third party administrator that is not insolvent but is deemed, by the Commissioner of this or any other state, to be potentially unable to fulfill its contractual obligations or that is placed under an order of rehabilitation, reorganization or conservation by a court of competent jurisdiction.

“Insolvent third party administrator” means a third party administrator:

1. Which is determined to be insolvent by a court of competent jurisdiction in this State or any other state;
2. Which files for relief in bankruptcy under Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq.;
3. Against which involuntary bankruptcy proceedings are filed under that title; or
4. For which a receiver has been appointed by a court of competent jurisdiction.

“Insurer” means a licensed health insurer, health, hospital or medical service corporation, health maintenance organization, dental service corporation or dental plan organization.

“NAIC” means the National Association of Insurance Commissioners.

“Temporary initial license, registration or certification” means a license, registration or certification issued by the Department for a limited period following April 4, 2005 which allows third party administrators or third party billing services operating in this State prior to April 4, 2005 to continue operating during the initial application process.

“Third party administrator” means a person or entity that: processes and pays claims on behalf of a benefits payer without the assumption of financial risk for the payment of health or dental benefits. Third party administrator shall include: an entity not licensed in New Jersey as an insurer that is not an affiliate or a subsidiary of a New Jersey licensed insurer, that processes claims on behalf of a benefits payer; an entity that is a subsidiary or an affiliate of a New Jersey licensed insurer that processes claims on behalf of that insurer and any other benefits payer; and an entity that is a subsidiary or affiliate of a New Jersey licensed insurer that only processes claims on behalf of benefits payers other than insurers. Third party administrator shall not include an employee, affiliate or subsidiary of a benefits payer formed for the purpose of processing and paying claims solely on behalf of the benefits payer, nor shall it include a collection agency or bureau or pharmacy benefits manager. For purposes of this chapter, third party administrator shall include organized delivery systems as defined by N.J.S.A. 17:48H-1, who are acting as third party administrators, which are certified by the Department of Health and Senior Services, but shall not include those organized delivery systems licensed by the Department of Banking and Insurance.

“Third party billing service” means a person or entity that is paid by a health care provider to process claims or claim payments on behalf of the health care provider, and that is not an employee, affiliate or subsidiary of the health care provider.

SUBCHAPTER 2. LICENSE OR REGISTRATION REQUIREMENTS FOR THIRD PARTY ADMINISTRATORS

11:23-2.1 License or registration required

(a) No person shall act as, offer to act as, or hold himself or herself out to be, a third party administrator in this State unless licensed or registered by the Commissioner as set forth in N.J.A.C. 11:23-2.2.

(b) Every third party administrator that is either not licensed in New Jersey as an insurer or an organized delivery system and is not an affiliate or subsidiary of an insurer licensed in New Jersey, or an affiliate or a subsidiary of a New Jersey licensed insurer and only processes or pays claims on behalf of benefits payers other than insurers shall be licensed by the Commissioner pursuant to the provisions of the Act.

11:23-5.3 Information to be provided to Commissioner

(a) In addition to the information otherwise required by the Act, these rules, or based upon the unique facts of particular cases, by the Commissioner, a third party billing service shall file with the Commissioner:

1. A description of the applicant's proposed method of marketing its services;
2. A statement setting forth the manner in which the applicant is to be compensated;
3. A description of the quality assurance procedures established by the applicant; and
4. A description of the procedures for prompt submissions of claims pursuant to the provisions of N.J.S.A. 17B:30-23 and N.J.A.C. 11:22-3.

11:23-5.4 Approval of certification application; standards

(a) The Commissioner may approve an application for certification as a third party billing service if he or she finds that the applicant meets the standards established by the Act, including, but not limited to, the following:

1. All of the information required by the Act, these rules or by the Commissioner has been filed;
2. The persons responsible for conducting the applicant's affairs are competent, trustworthy and possess good reputations, and have appropriate experience, training and education;
3. The applicant has demonstrated the ability to ensure that its services will be performed in a manner which will result in the efficient operation of its business, including, if the applicant accepts payments from benefits payers on behalf of its clients, appropriate financial controls;
4. The standard contract forms to be used by the applicant are acceptable; and
5. The applicant has adequate arrangements for complying with the provisions of N.J.S.A. 17B:30-23 et seq. and N.J.A.C. 11:22-3.

(b) In the case of an applicant for temporary initial certification as a third party billing service, the Commissioner may rely on the applicant's submissions and certification submitted pursuant to N.J.A.C. 11:23-5.1(b) in issuing a temporary, initial certification. Where the Commissioner has, on that basis, determined to do so, the applicant shall be issued a temporary initial certification, which shall be valid for the lesser of a period of one year from the date of issuance of the temporary initial certification or until such time as the Commissioner approves or disapproves the application based on a detailed review. Applications which have not been approved or disapproved, or where the applicant has not been notified that the application is incomplete, within one year from date of issuance of the temporary initial certification, shall be deemed approved.

11:23-5.5 Denial of application for certification

(a) The Commissioner may deny an application for certification as a third party billing service if he or she finds that any of the standards established by the Act or these rules have not been met or for any other reasonable grounds.

(b) If the application for certification is denied, the Commissioner shall notify the applicant in writing by certified mail, return receipt requested, setting forth the reasons for the denial.

(c) The applicant may request a hearing by notice to the Commissioner no later than the 30th day following receipt of the notice of denial.

11:23-5.6 Written agreement between third party billing service and client

(a) A third party billing service shall not conduct any business with a client in the absence of a written agreement between the billing service and the client. The agreement shall be retained as part of the official records of the third party billing service for the duration of the agreement.

(b) The agreement shall include:

1. The services to be provided by the third party billing service on behalf of the client;
2. Financial arrangements to be used if the third party billing service accepts monies from benefits payers on behalf of a client;
3. Provisions setting forth the respective liability of the client and the third party billing service for the accuracy and eligibility of submitted claims, and for the prompt submission of claims pursuant to the provisions of N.J.S.A. 17B:30-23 and N.J.A.C. 11:22-3; and
4. The responsibilities of the third party billing service to the client with respect to the maintenance of appropriate back-up systems against the loss of records, and the maintenance of appropriate insurance coverage by the third party billing service against the risk of loss.

11:23-5.7 Fiduciary duty of third party billing service; maintenance of separate accounts

(a) A third party billing service that accepts monies from health benefits payers on behalf of a client shall be deemed to act in a fiduciary capacity on behalf of the client in the receipt and transmittal of funds and shall have all responsibility attendant to a fiduciary as established by law.

(b) Monies transmitted by benefits payers or on behalf of clients shall be kept in a separate account maintained in the name of the client or jointly in the names of the client and the third party billing service, and shall not be commingled with any other funds of the third party billing service or other clients of the third party billing service.

11:23-5.8 Notification of material change in ownership or control of, or in other previously supplied information related to the billing service

A third party billing service shall immediately notify the Commissioner of any material change in its ownership, control, or other fact or circumstance affecting its continuing qualification for Certification.

11:23-5.9 Suspension or revocation of certification; grounds

(a) The Commissioner may suspend or revoke a certification issued pursuant to the Act if he or she finds that the third party billing service:

1. Is using methods or practices in the conduct of its business that render its further transaction of business in this State hazardous or injurious to its clients or to the public;
2. Has failed to pay any judgment rendered against it within 60 days after the judgment has become final;
3. Has violated any lawful rule or order of the Commissioner or any provision of the laws of this State;
4. Has, without just cause, refused or failed to perform services arising under its contracts with clients;

5. Has been convicted of, or has entered a plea of guilty or nolo contendere to a felony or crime of the first, second or third degree in this State, without regard to whether adjudication was withheld; or

6. Has had its credential as a third party billing service suspended, revoked or non-renewed for cause in another State.

(b) If the Commissioner finds that one or more grounds exist for the suspension or revocation of a certification issued under the Act, the Commissioner may, in lieu of or in addition to suspension or revocation, impose a fine upon the third party billing service.

11:23-5.10 Civil penalties

The Commissioner may, upon notice and hearing, assess a civil administrative penalty in an amount not less than \$250.00 nor more than \$5,000 for each day that a third party billing service is in violation of the Act. A penalty imposed by the Commissioner pursuant to this section may be in lieu of, or in addition to, suspension or revocation of a certification pursuant to the Act. A penalty may be recovered in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L. 1999, c.274 (N.J.S.A. 2A:58-10 et seq.).