

**CHAPTER 10**  
**DENTAL SERVICES**

**Authority**

N.J.S.A. 17:1-8.1, 17:1-15(e), 17:48C-18 et seq., 17:48D-1 et seq.,  
17B:26-44.4 et seq. and 17B:27-51.10a et seq.

**Source and Effective Date**

R.2006 d.14, effective December 7, 2005.  
See: 37 N.J.R. 3217(a), 38 N.J.R. 310(b).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 10, Dental Services, expires on June 5, 2011. See: 43 N.J.R. 124(a).

**Chapter Historical Note**

Chapter 10, Hospital-Medical-Dental Services, Subchapter 2, Employee's Dental Benefit Plans; Alternative Coverage, was adopted as R.1984 d.115, effective April 2, 1984. See: 15 N.J.R. 1350(a), 16 N.J.R. 735(a).

Subchapter 1, Dental Plan Organizations, was adopted as R.1985 d.374, effective July 15, 1985. See: 16 N.J.R. 2230(a), 17 N.J.R. 1768(a).

Pursuant to Executive Order No. 66(1978), Chapter 10, Hospital/Medical-Dental Services, was readopted as R.1990 d.384, effective July 12, 1990. As a part of R.1990 d.384, Chapter 10, Hospital/Medical-Dental Services, was renamed Dental Services, effective August 6, 1990. See: 22 N.J.R. 1691(a), 22 N.J.R. 2326(a).

Pursuant to Executive Order No. 66(1978), Chapter 10, Dental Services, was readopted as R.1995 d.422, effective July 10, 1995. See: 27 N.J.R. 1739(a), 27 N.J.R. 2937(a). Pursuant to Executive Order No. 66(1978), Chapter 10 expired on July 10, 2000.

Chapter 10, Dental Services, was adopted as new rules by R.2000 d.348, effective August 21, 2000. See: 32 N.J.R. 1998(a), 32 N.J.R. 3081(b).

Chapter 10, Dental Services, was readopted as R.2006 d.14, effective December 7, 2005. See: Source and Effective Date.

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**SUBCHAPTER 1. DENTAL PLAN ORGANIZATIONS**

**11:10-1.1 Purpose**

(a) The Dental Plan Organization Act (N.J.S.A. 17:48D-1 et seq.) regulates persons and corporations which offer plans for the prepayment or postpayment of dental services. The Act provides for the licensing and supervision of dental plan organizations to protect enrollees of the plan and to assure that the services contracted for are actually delivered.

(b) Section 23 of the Act authorizes the Commissioner to promulgate rules and regulations to effectuate its purposes. This subchapter establishes rules to implement the Act. These rules are designed to facilitate compliance with the Act by clarifying its requirements. Specific standards are also prescribed to ensure that the purposes of the Act are fulfilled.

**11:10-1.2 Scope and application**

(a) This subchapter applies to dental plan organizations as defined in N.J.S.A. 17:48D-2c and N.J.A.C. 11:10-1.3. Such organizations may offer group and individual dental plans on a prepaid and postpaid capitation basis.

(b) If the dental plan organization utilizes more than one full-time equivalent dentist to serve dental plan enrollees, it is subject to the Act and this subchapter.

(c) An individual dentist in solo practice who capitates his services is not required to comply with the Act or this subchapter.

(d) An individual dentist in solo practice may apply for a certificate of authority to act as a DPO, and shall comply with all the requirements of this subchapter.

(e) Supplemental dental plans as defined at N.J.A.C. 11:10-1.3 are subject to the Act and this subchapter. A DPO may not offer a supplemental dental plan unless it can be actuarially demonstrated that the capitation rate for such a plan is proportionate to the rate for an identical plan that provides 100 percent full coverage for the same services provided under the supplemental plan.

(f) An organization which provides coverage of dental services exclusively on a fee-for-service basis cannot qualify as a dental plan organization. Such organizations may not operate in this State without a certificate of authority as a health insurer or hospital, medical, dental or health service corporation, since fee-for-service coverage is either insurance or service benefits.

**Case Notes**

District court could sign stipulated order of settlement which vacated summary judgment holding that ERISA preempted New Jersey Dental Plan Organization Act and accompanying regulations. *Oracare DPO, Inc. v. Merin, C.A.3 (N.J.)1992, 972 F.2d 519.*

**11:10-1.3 Definitions**

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

“Capitation” means a method of compensation by a DPO to its participating primary dentists for services and supplies provided to members of the DPO on the basis of a fixed payment per member, together with such additional types of payments as are specifically approved by the Department as appropriate to recruit new participating dentists, recruit or retain participating dentists in underserved areas and/or eliminate disincentives for participating primary dentists to render quality dental care to members and to its participating specialist dentists for services and supplies provided to members of the DPO on the basis of either a fixed payment per member or a contractual fee schedule from an approved specialist pool. A plan that employs dentists whose salaries are paid by the DPO shall be considered a capitated plan.

“Commissioner” means the Commissioner of the Department of Banking and Insurance.

“Department” means the Department of Banking and Insurance.

“Dental Plan Organization” or “DPO” means a direct provider of dental services compensated on a prepaid or postpaid capitation basis, which provides such services to either individuals or groups. The provision of such services by the DPO is deemed to be a “non-delegable” duty. An arrangement whereby dental services are provided indirectly through “independent contractors” is not considered a DPO. An arrangement whereby compensation to dentists for dental services is provided exclusively on a fee-for-service basis is not considered a DPO. An arrangement whereby dental services are provided by entering into an agreement with providers, or by employing dentists, where the dentists agree to treat enrollees of the plan in their private offices or a central facility, is considered a DPO.

“Emergency” means procedures to evaluate and stabilize dental conditions of recent onset and severity accompanied by excessive bleeding, severe pain, or acute infections that would lead a prudent layperson possessing an average knowledge of dentistry to believe that immediate care is needed.

“Fee-for-service” is a reimbursement arrangement in which the amount reimbursed for dental services is paid either to an

insured (or subscriber) or to a provider of services and the amount is determined on the basis of the dental procedure performed and/or the amount charged by the dentist for the procedure. An example of a fee-for-service plan is one covering or indemnifying the services provided by dentists on the basis of a schedule of fees or percentage reimbursement of the fee charged, under which the dentist does not share in the “volume of service” risk assumed by the DPO.

“One Full-Time Equivalent Dentist” means one dentist working full time or an aggregation of hours spent by more than one dentist on DPO enrollees so as to equal a 40-hour week. A full-time general practitioner can serve a group of at least 1,500 enrollees and dependents combined. This number could vary by specialty and service performed; for example, an orthodontist may serve a smaller number of patients than a general practitioner.

“Postpaid capitation” means an arrangement whereby the primary dentist providing services is compensated by an annual distribution of the excess in a specialist pool in addition to the prepaid capitation.

“Prepaid capitation” means an arrangement whereby the dentist providing services is compensated through capitation on the basis of the presence of an enrollee regardless of whether services are provided.

“Primary dentist” means a dentist who is not a specialist.

“Specialist” means a dentist whose training and expertise are in a specific area of dentistry. Recognized clinical specialists in dentistry include, but are not limited to, endodontists, oral and maxillofacial surgeons, oral pathologists, orthodontists, periodontists and prosthodontists.

“Specialist pool” means a portion of the premium that is set aside to cover the cost of specialist services not provided by the primary care dentist and not paid on a prepaid capitation basis.

“Supplemental Dental Plan” means an arrangement in which a dentist or group of dentists agrees to relieve patients of paying any patient charges or copayments associated with dental insurance or other dental coverage for a predetermined fee. Supplemental dental plan also means an arrangement which covers less than 50 percent of an enrollee’s dental expenses regardless of whether the enrollee has other coverage.

**11:10-1.4 General rules**

(a) To obtain an application for a certificate of authority as a dental plan organization, a written request for the appropriate forms must be submitted to the Commissioner. Applicants shall complete and return the forms with the supporting documents requested by the Department.