

## CHAPTER 267

AN ACT concerning third party administrators of health benefits plans and third party billing services and supplementing Title 17B of the New Jersey Statutes.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

C.17B:27B-1 Definitions relative to third party administrators, billing services.

1. As used in this act:

"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.

"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.

"Health care provider" or "provider" means an individual or entity which provides a covered benefit or service.

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

"Third party administrator" means a person or entity that: processes claims 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: (1) an entity not licensed as an insurer that is not an affiliate or subsidiary of an insurer, that processes claims on behalf of a benefits payer; (2) an entity that is a subsidiary or affiliate of an insurer that processes claims on behalf of the insurer; and (3) an entity that is a subsidiary or affiliate of an 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.

"Third party billing service" means a person or entity that is paid by a health care provider to process claims or claims payments on behalf of the health care provider.

C.17B:27B-2 Licensure, registration required for third party administrators.

2. a. On or after January 1, 2002, no person shall act as, offer to act as, or hold himself out to be, a third party administrator in this State unless licensed or registered by the commissioner in accordance with this act. Every third party administrator that is either: (1) an entity that is not licensed as an insurer and is not an affiliate or subsidiary of an insurer; or (2) an entity that is an affiliate or a subsidiary of an insurer that only processes or pays claims on behalf of benefits payers other than insurers shall be licensed under the provisions of this act. Every third party administrator that is an entity that is a subsidiary or affiliate of an insurer that processes claims on behalf of both the insurer and benefits payers other than the insurer shall be registered with the commissioner pursuant to the provisions of this act.

b. Application for licensure shall be made to the commissioner on a form provided by the commissioner. The commissioner shall establish by regulation the information that shall accompany the application, which may include, but need not be limited to:

(1) a copy of the applicant's basic organizational documents, which shall include articles of incorporation, articles of association, partnership agreement, management agreement, trust agreement or other documents governing the operation of the applicant that are applicable to the applicant's form of business organization;

(2) a copy of the executed bylaws, rules and regulations, or other documents relating to the operation of the applicant's internal affairs;

(3) the names, addresses and official positions of the persons responsible for the conduct of the affairs of the applicant, including, but not limited to, if applicable: the members of the board of directors, executive committee or other governing board or committee; the principal officers or partners; shareholders owning or having the right to acquire 10% or more

of the voting securities of the corporation or partnership interest of a partnership, or equity interest, in the case of another form of business organization; each person who has loaned funds to the applicant for the operation of its business; a statement of any criminal convictions and civil, regulatory or enforcement action, including actions related to professional licensing, taken or pending against any principal officer or owner of the applicant; and the relationship with any other business entity, including a parent corporation;

(4) a copy of the applicant's most recent financial statements audited by an independent certified public accountant. If the financial affairs of the applicant's parent company are audited by an independent certified public accountant, but those of the applicant are not, then a copy of the most recent audited financial statement of the applicant's parent company, audited by an independent certified public accountant, shall be submitted. A consolidated financial statement of the applicant and its parent company shall satisfy this requirement unless the commissioner determines that additional or more recent financial information is required for the proper administration of this act;

(5) a copy of the applicant's business plan, including information on staffing levels and the activities undertaken or to be undertaken in this State. The plan shall include a statement of the administrator's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing and record keeping and a three-year projection of anticipated operating results, a statement of the sources of working capital and any other sources of funding and provision for contingencies that enable the applicant to perform the work for which it has contracted;

(6) a list of the benefits payers under contract with the applicant and a copy of the standard contract or contracts used by the applicant in the course of business; and

(7) a power of attorney, duly executed by the applicant, if not domiciled in this State, appointing the commissioner and his successors in office as the true and lawful attorney of the applicant in and for this State upon whom all lawful process in any legal action or proceeding against the organization on a cause of action arising in this State may be served.

With respect to an applicant for licensure that is an affiliate or subsidiary of an insurer, the commissioner shall establish by regulation the information necessary to be filed, which shall not be unnecessarily duplicative of any information already on file with the Department of Banking and Insurance.

An application for licensure shall be approved if not disapproved by the commissioner within 60 days of receipt of a completed application. An application shall be deemed to be complete if all of the information required to be submitted to the commissioner by regulation has been submitted by the applicant.

c. Registration shall be on a form prescribed by the commissioner, which shall include: (1) a copy of the applicant's basic organizational documents, as required by the commissioner; (2) the names and official positions of the persons responsible for the conduct of the affairs of the applicant; (3) a copy of the applicant's most recent financial statements, or a consolidated financial statement of the applicant and its parent company; (4) such other information as the commissioner may require. An application for registration shall be approved if not disapproved by the commissioner within 60 days of receipt of a completed application. For the purposes of this subsection, an application shall be complete if all of the information required to be submitted to the commissioner by regulation has been submitted by the applicant. Information required pursuant to this subsection shall not be unnecessarily duplicative of any information already on file with the Department of Banking and Insurance.

#### C.17B:27B-3 Additional information required for licensure, registration.

3. In addition to the information required by section 2 of this act, the applicant for licensure or registration shall file with the commissioner:

- a. a description of the applicant's proposed method of marketing its services;
- b. a statement setting forth the means by which the applicant is to be compensated;
- c. a description of the complaint and appeals procedures instituted by the applicant; and
- d. a description of the quality assurance procedures established by the applicant.

An applicant shall make available for inspection by the commissioner copies of all standard

contracts with benefits payers or other persons with whom it does business, including subcontractors and reinsurers. In the case of an applicant for registration, the information required to be filed with the commissioner shall apply only to services provided to benefits payers other than an insurer.

C.17B:27B-4 Issuance of license, approval of application for registration.

4. The commissioner may issue a license to an applicant or approve an application for registration as a third party administrator if he finds that the applicant meets the standards established by this act, including, but not limited to, the following:

- a. all of the materials required by this act or by the commissioner have been filed;
- b. the persons responsible for conducting the applicant's affairs are competent, trustworthy and possess good reputations, and have appropriate experience, training and education;
- c. the applicant has demonstrated the ability to assure that its services will be performed in a manner which will ensure the efficient operation of its business, including appropriate financial controls;
- d. the standard contract forms to be used by the applicant are acceptable;
- e. the applicant has adequate financial arrangements with the benefits payers for which it will perform its services and adequate arrangements for complying with the provisions of P.L.1999, c.154 (C.17B:30-23 et al.); and
- f. the compensation arrangements made between the applicant and benefits payers do not result in the assumption of financial risk by the applicant.

In the case of an applicant for registration, the provisions of subsections d., e., and f. of this section shall apply only to services provided by the applicant to benefits payers other than an insurer.

C.17B:27B-5 Denial of license, registration.

5. The commissioner may deny an application for licensure or registration as a third party administrator if he finds that any of the standards established by this act have not been met or for any other reasonable grounds. If the application for licensure or registration is denied, the commissioner shall notify the applicant in writing by certified mail, return receipt requested, setting forth his reasons for denial. The applicant may request a hearing by notice to the commissioner no later than the 30th day following receipt of the notice of denial.

C.17B:27B-6 Provisions of written agreement; requirements.

6. A third party administrator shall not conduct any business with a benefits payer in the absence of a written agreement between the administrator and the benefits payer, except that this shall not apply to a third party administrator registered under the provisions of section 2 of this act with respect to services performed for an insurer. The agreement shall be retained as part of the official records of the administrator for the duration of the agreement and for five years thereafter. The provisions of the agreement shall include, but shall not be limited to:

- a. the services to be provided by the administrator and the means by which the administrator is to be compensated;
- b. the responsibilities of the benefits payer to the administrator with respect to claims to be paid by the administrator on behalf of a benefits payer, including: the provision of enrollment and eligibility information; arrangement for a preliminary or escrowed deposit of funds by the benefits payer, if any; the method used for the transmittal of funds from the benefits payer to the administrator; notification by the benefits payer of modifications in the benefits payer's benefits plan; provisions setting forth the respective liability of the administrator and benefits payer for payment of ineligible claims; liability for claims payments that are overdue; and provisions regarding the procurement of reinsurance or stop-loss insurance; and
- c. the responsibilities of the administrator to the benefits payer, including: the maintenance of appropriate back-up systems against the loss of records; establishment and maintenance of appropriate financial controls; provisions regarding the benefits payer's rights with respect to conducting claims audits by an outside auditor; the maintenance of appropriate insurance coverage, which may include, but not be limited to, general liability insurance, valuable papers

insurance and errors and omissions coverage; appropriate access by the benefits payer to the administrator's records; and procedures for making available the claims experience or other information to the benefits payer at its request, including, but not limited to, monthly reports.

C.17B:27B-7 Access to books, records.

7. a. The commissioner shall have access to all books and records of a third party administrator for the purposes of examination, audit and inspection. Any trade secrets, proprietary information or the identity and addresses of enrollees contained in the books and records shall be kept confidential, except that the commissioner may use the information in any proceeding instituted against the administrator.

b. The benefits payer shall own the records generated by the administrator pertaining to the benefits payer, except that the administrator shall retain the right to continuing access to books and records to permit the administrator to fulfill all of its contractual obligations to the benefits payer.

c. In the event that an agreement between an administrator and a benefits payer is canceled, notwithstanding the provisions of section 6 of this act to the contrary, the administrator may, with the written agreement of the benefits payer, transfer all records to a new administrator instead of retaining them for five years.

C.17B:27B-8 Payment to third party administrators not based solely on claims denials.

8. If a third party administrator adjudicates claims under a health benefits plan, the commissions, fees or charges that the benefits payer pays the administrator, shall not be based solely on the number or amount of claims denied by the administrator. This provision shall not prohibit an administrator from receiving performance-based compensation if that compensation is not predicated on denial of claims or coverage.

C.17B:27B-9 Fiduciary responsibility of third party administrators.

9. a. A third party administrator shall be deemed to act in a fiduciary capacity on behalf of the benefits payer in the receipt and transmittal of the benefits payer's funds, and shall have all responsibility attendant to a fiduciary as established by law. Funds transmitted shall be kept in a separate account and shall not be commingled with any other funds. If an account is jointly held by the administrator and the benefits payer, it shall be deposited in a State or federally chartered insured depository institution, and the administrator shall provide a monthly accounting of all transactions in that account. A benefits payer shall have the responsibility to make funds necessary to pay the claims available to the administrator in a timely manner, as provided in the contract. An administrator shall not be liable to any party for the failure of the benefits payer to make funds available to pay claims.

b. An administrator shall maintain in force a fidelity bond in its own name on its officers and employees, in an amount established by the commissioner by regulation.

C.17B:27B-10 Separate accounts for funds remitted.

10. All funds remitted to an administrator by a benefits payer licensed or authorized to do business in this State shall be held by the third party administrator in a separate account maintained in the name of the benefits payer or in a separate account maintained jointly in the names of the benefits payer and the administrator. If funds have been collected by the administrator from a provider or enrollee on behalf of a benefits payer, they shall be maintained in a separate account maintained in the name of the benefits payer, maintained jointly in the names of the benefits payer and the administrator or remitted to the benefits payer, as provided in the contract. Copies of all records pertaining to the collection of funds shall be made available to the benefits payer as provided in the contract.

C.17B:27B-11 Prompt delivery of communications to enrollees.

11. Any policies, certificates, booklets, termination notices or other written communications delivered by the benefits payer to the third party administrator for delivery to enrollees shall be delivered by the administrator promptly, in accordance with the instructions of the benefits

payer.

C.17B:27B-12 Notification of material changes to commissioner.

12. A third party administrator shall immediately notify the commissioner of any material change in its ownership, control or other fact or circumstance affecting its qualification for a license.

C.17B:27B-13 Annual reports.

13. A third party administrator shall file an annual report for the preceding calendar year with the commissioner on or before March 1 of each year, in a form and manner prescribed by the commissioner. The annual report shall contain the complete names and addresses of all benefits payers with which the administrator had a contract in effect during the preceding calendar year. The commissioner shall establish a filing fee for the report, by regulation.

C.17B:27B-14 Suspension, revocation of license, registration.

14. The commissioner may suspend or revoke a license or registration issued pursuant to this act if he finds that the third party administrator:

- a. is in an unsound financial condition;
- b. 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 the benefits payers with which it has contracted or the public;
- c. has failed to pay any judgment rendered against it in this State within 60 days after the judgment has become final;
- d. has violated any lawful rule or order of the commissioner or any provision of State law;
- e. has refused to be examined or produce its accounts, records and files for examination, or if any of its officers has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to an examination, when required by the commissioner;
- f. has, without just cause, refused or failed to pay proper claims or perform services arising under its contracts;
- g. at any time fails to meet any qualification for which issuance of the license could have been refused had that failure then existed and been known to the commissioner;
- h. 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 held;
- i. is under suspension or revocation in another state; or
- j. has willfully reimbursed enrollees for benefits not eligible under the benefits payer's benefits plan.

If the commissioner finds that one or more grounds exist for the suspension or revocation of a certificate of authority issued under this act, the commissioner may, in lieu of suspension or revocation, impose a fine upon the administrator.

C.17B:27B-15 Immediate suspension of license, registration, grounds.

15. The commissioner may, without advance notice or hearing, immediately suspend the license or registration of a third party administrator if he finds that one or more of the following circumstances exist:

- a. the administrator is insolvent or impaired;
- b. a proceeding for receivership, conservatorship, rehabilitation or other delinquency proceeding regarding the administrator has been commenced in another state; or
- c. the financial condition or business practices of the administrator otherwise pose an imminent threat to the public health, safety or welfare of the residents of this State.

C.17B:27B-16 Certification required for third party billing services.

16. On or after January 1, 2002, no person shall act as, offer to act as or hold himself out to be a third party billing service in this State unless certified by the commissioner in accordance with this act. Application for certification shall be made to the commissioner on a form provided

by the commissioner. The commissioner shall establish by regulation the information that shall accompany the application, which shall include, but need not be limited to:

a. a copy of the applicant's basic organizational documents, which shall include articles of incorporation, articles of association, partnership agreement, management agreement, trust agreement or other documents governing the operation of the applicant that are applicable to the applicant's form of business organization;

b. a copy of the executed bylaws, rules and regulations, or other documents relating to the operation of the applicant's internal affairs;

c. the names, addresses and official positions of the persons responsible for the conduct of the affairs of the applicant, including, but not limited to, if applicable: the members of the board of directors, executive committee or other governing board or committee, the principal officers or partners, shareholders owning or having the right to acquire 10% or more of the voting securities of the corporation or partnership interest of a partnership or equity interest, in the case of another form of business organization;

d. if the applicant accepts monies from benefits payers on behalf of clients, the application shall include a copy of the applicant's most recent financial statements audited by an independent certified public accountant;

e. a copy of the applicant's business plan, including information on staffing levels and the activities undertaken or to be undertaken in this State. The plan shall include a statement of the third party billing service's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing and record keeping;

f. a list of the applicant's clients and a copy of the standard contract or contracts used by the applicant in the course of business; and

g. if the applicant accepts monies from benefits payers on behalf of clients, the application shall be accompanied by a power of attorney, duly executed by the applicant, if not domiciled in this State, appointing the commissioner and his successors in office as the true and lawful attorney of the applicant in and for this State upon whom all lawful process in any legal action or proceeding against the organization on a cause of action arising in this State may be served.

C.17B:27B-17 Additional information to be filed by third party billing services.

17. In addition to the information otherwise required by this act or by the commissioner, a third party billing service shall file with the commissioner:

a. a description of the applicant's proposed method of marketing its services;

b. a statement setting forth the means by which the applicant is to be compensated;

c. a description of the quality assurance procedures established by the applicant; and

d. a copy of the standard contract or contracts used by the applicant in contracting with providers.

C.17B:27B-18 Approval of applications for certification.

18. The commissioner may approve an application for certification as a third party billing service if he finds that the applicant meets the standards established by this act, including, but not limited to, the following:

a. all of the material required by this act or by the commissioner have been filed;

b. the persons responsible for conducting the applicant's affairs are competent, trustworthy and possess good reputations, and have appropriate experience, training and education;

c. 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;

d. the standard contract forms to be used by the applicant are acceptable; and

e. the applicant has adequate arrangements for complying with the provisions of P.L.1999, c.154 (C.17B:30-23 et al.).

C.17B:27B-19 Denial of applications for certification.

19. The commissioner may deny an application for certification as a third party billing service if he finds that any of the standards established by this act have not been met or for any

other reasonable grounds. If the application for certification is denied, the commissioner shall notify the applicant in writing by certified mail, return receipt requested, setting forth his reasons for denial. The applicant may request a hearing by notice to the commissioner no later than the 30th day following receipt of the notice of denial.

C.17B:27B-20 Written agreements required for conducting business as third party billing service.

20. 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.

The agreement shall include the services to be provided by the third party billing service on behalf of the client; financial arrangements to be used if the third party billing service accepts monies from benefits payers on behalf of a client; 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 P.L.1999, c.154 (C.17B:30-23 et al.); and 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.

C.17B:27B-21 Fiduciary responsibility of third party billing services.

21. 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. 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.

C.17B:27B-22 Notification of material changes to commissioner.

22. a. 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 qualification for certification.

b. A third party billing service shall file such reports, at such times as may be required by the commissioner, including reports that will verify compliance with the provisions of P.L.1999, c.154 (C.17B:30-23 et al.).

C.17B:27B-23 Suspension, revocation of certification.

23. The commissioner may suspend or revoke a certification issued pursuant to this act if he finds that the third party billing service:

a. 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 the public;

b. has failed to pay any judgment rendered against it within 60 days after the judgment has become final;

c. has violated any lawful rule or order of the commissioner or any provision of the laws of this State;

d. has, without just cause, refused or failed to perform services arising under its contracts with clients;

e. 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 held; or

f. is under suspension or revocation in another State.

If the commissioner finds that one or more grounds exist for the suspension or revocation of a certification issued under this act, the commissioner may, in lieu of suspension or

revocation, impose a fine upon the third party billing service.

C.17B:27B-24 Violations, penalties.

24. The commissioner may, upon notice and hearing, assess a civil administrative penalty in an amount not less than \$250 nor more than \$5,000 for each day that a third party administrator or third party billing service is in violation of this 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 license pursuant to this act. A penalty may be recovered in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

C.17B:27B-25 Rules, regulations.

25. The commissioner shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to carry out the purposes of this act.

26. This act shall take effect immediately.

Approved December 13, 2001.