

NEW JERSEY
INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD
&
SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD
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Trenton, NJ 08625

JOINT ADVISORY BULLETIN NUMBER 95-01

TO: **ALL MEMBERS OF THE IHC AND SEH PROGRAMS**
FROM: **IHC AND SEH PROGRAM BOARDS**
RE: **COVERAGE OF INDIVIDUALS UNDER IHC AND SEH PLANS**
DATE: March 3, 1995

The Boards of Directors of the New Jersey Individual Health Coverage ("IHC") Program and Small Employer Health Benefits ("SEH") Program have received numerous inquiries with regard to the requirements under the Individual Health Insurance Reform Act ("IHC Act"), N.J.S.A. 17B:27A-2 et seq., and Small Employer Health Benefits Act ("SEH Act"), N.J.S.A. 17B:27A-17 et seq. for the enrollment of individuals and their dependents in individual health benefits plans, small employer health benefits plans, and large group plans, whether offered by a carrier, association, trust, or multiple employer arrangement. This bulletin explains, and illustrates on the attached chart, the most common questions about enrollment that have been presented to the Boards and offers guidance for carriers and agents to understand and comply with the law.

I. PRE-REFORM INDIVIDUAL HEALTH BENEFITS PLANS

Individual health benefits plans that were issued to "eligible persons" on a non-open enrollment basis prior to August 1, 1993, the effective date of the IHC Program, are not affected by the IHC Act and may be renewed under the terms of the policy or contract. The IHC Act defines an "eligible person" as a resident of New Jersey who is not eligible to be insured under a group health benefits plan, Medicare, or Medicaid.¹ The law does not require that a carrier terminate, or convert to standard plans, individual health benefits plans issued to eligible persons on a non-open enrollment basis (whether issued through an association or trust, as described in section II below, or directly by a carrier) prior to August 1, 1993.

¹ The federal Omnibus Budget Reconciliation Act of 1993 requires that the State of New Jersey, by April 1, 1995, rescind any provisions of law which allow Medicaid eligibility to be taken into consideration with respect to the eligibility for or issuance of private health insurance. Therefore, the Board anticipates that on or before April 1, 1995 Medicaid eligibility will no longer disqualify someone from obtaining individual coverage.

II. COVERAGE ISSUED BY AN ASSOCIATION OR TRUST PLAN ON OR AFTER AUGUST 1, 1993

Since August 1, 1993, only standard individual health benefits plans approved by the IHC Board should have been issued to “eligible persons” in New Jersey. The IHC Act includes in the definition of “individual health benefits plan” “(a) a health benefits plan for eligible persons and their dependents,” and what previously had been considered “group” insurance, namely, “(b) a certificate issued to an eligible person which evidences coverage under a policy or contract issued to a trust or association, regardless of the situs of delivery of the policy or contract, if the eligible person pays the premium and is not being covered under the policy or contract pursuant to continuation of benefits provisions applicable under Federal or State law.”

By way of illustration, coverage by an association or trust “group” policy of any of the following examples of “eligible persons” is considered an “individual health benefits plan:”

- * a student;
- * an unemployed individual or part-time employee;
- * a self-employed person (see illustration #1 attached);
- * an employer, when he or she (and dependents) is the only person seeking coverage by a health benefits plan (except as provided under illustrations #4 and #5);
- * a husband and wife who are the only employees of a business, if one spouse is seeking coverage as a dependent of the other rather than as a separate employee (see illustration #6);

Even where more than one “eligible person” working for the same employer receives coverage by an association or trust policy, each employee’s coverage is considered an “individual health benefits plan,” rather than group coverage, if the individual employee pays the entire premium, which is to say that the employer does not contribute to the premium (see illustration #3).

III. COVERAGE OF ONE PERSON BY A SMALL EMPLOYER GROUP PLAN

The SEH Program rules, in certain circumstances, permit coverage of one person by a valid small employer group health benefits plan. This situation can arise because a carrier must issue coverage to a small employer if: (1) there are 2-49 eligible employees; and (2) the small employer meets the minimum participation requirement of 75%,² pursuant to N.J.A.C. 11:21-7.6.

A. INDEMNITY AND HMO PLANS OFFERED BY ONE EMPLOYER: When determining participation pursuant to N.J.A.C. 11:21-7.6, a carrier counts all

² The SEH Program rules permit a carrier to apply to the Board for approval of a minimum participation rate of less than 75%. N.J.A.C. 11:21-7.6. In all examples used in this bulletin, a minimum participation rate of 75% is assumed.

eligible employees receiving coverage, whether covered by an HMO or indemnity plan. Therefore, when a small employer offers both indemnity and HMO coverage to employees and the minimum participation rate of 75% is met, counting the eligible employees covered by the two carriers together (and employees covered by a spouse's plan, as described below), the HMO or indemnity carrier may be required to cover one eligible employee in a small employer plan (see illustration #4).

B. EMPLOYEES COVERED BY A SPOUSE'S HEALTH PLAN: A carrier is required to count as participating in the small employer health benefits plan an eligible employee who is not covered under the small employer's plan because the employee is covered as a dependent under a spouse's health benefits plan. Therefore, a carrier may be required to issue a small employer health benefits plan to one eligible employee if a sufficient number of a small employer's non-participating employees are covered by their spouses' health plans (see illustration #5).

IV. HUSBAND AND WIFE COVERAGE

A husband and wife who are the only employees of a small employer may enroll in either individual or small group coverage, depending on whether they are covered as two separate employees (small employer group) or an eligible person with dependents (individual coverage) (see illustration #6).

V. ELIGIBLE PERSONS ENROLLED IN NON-CONFORMING INDIVIDUAL HEALTH BENEFITS PLANS SINCE AUGUST 1, 1993

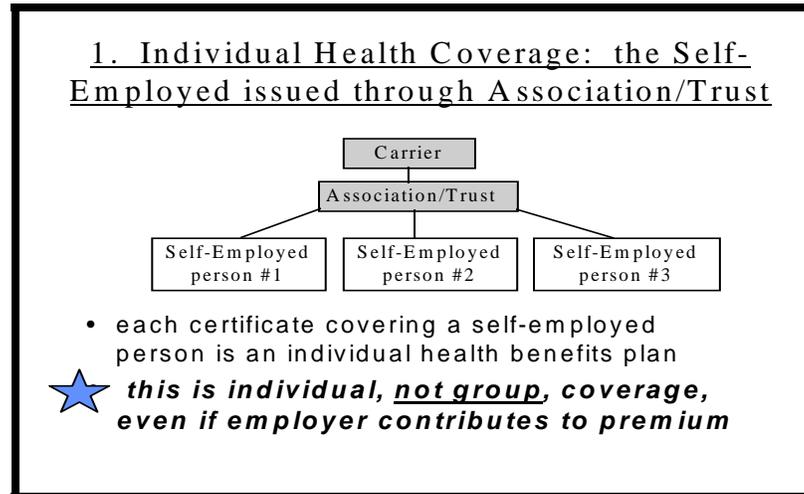
The IHC Board and Department of Insurance are requiring all carriers or associations which enrolled eligible persons on or after August 1, 1993 in individual health benefits plans that do not conform in all respects with the IHC Act and rules, under any of the scenarios described above and in the attached illustrations, to either convert them to a standard IHC plan or cancel their coverage within 60 days. Carriers that voluntarily disclose, within 30 days of the date of this bulletin, that this has occurred will be permitted to work out an orderly process for notifying such persons, converting or terminating the non-standard plans, and otherwise coming into compliance with the IHC Act. **Carriers that fail to disclose the existence of coverage issued on or after August 1, 1993 in violation of the IHC Act may be subject to fines, penalties, or suspension or revocation of their authority to issue health benefits plans in New Jersey.** Carriers that wish to discuss compliance issues may contact the Department of Insurance, Paul DeAngelo, Director, Division of Enforcement and Consumer Protection, at (609)984-2444.

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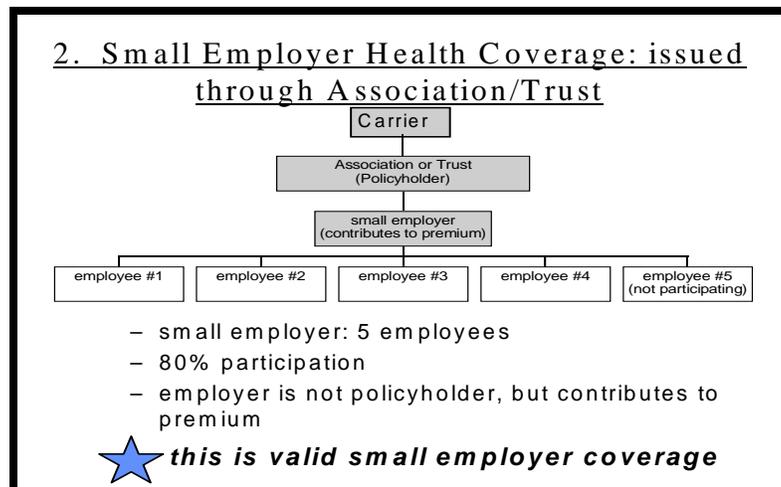
Illustrations And Explanations³

* Individual And Small Group Coverage By Association Or Trust Plan:

NUMBER 1 This illustration demonstrates that a self-employed person who is an eligible person covered by a certificate evidencing coverage by an association or trust group policy has individual, not group coverage.

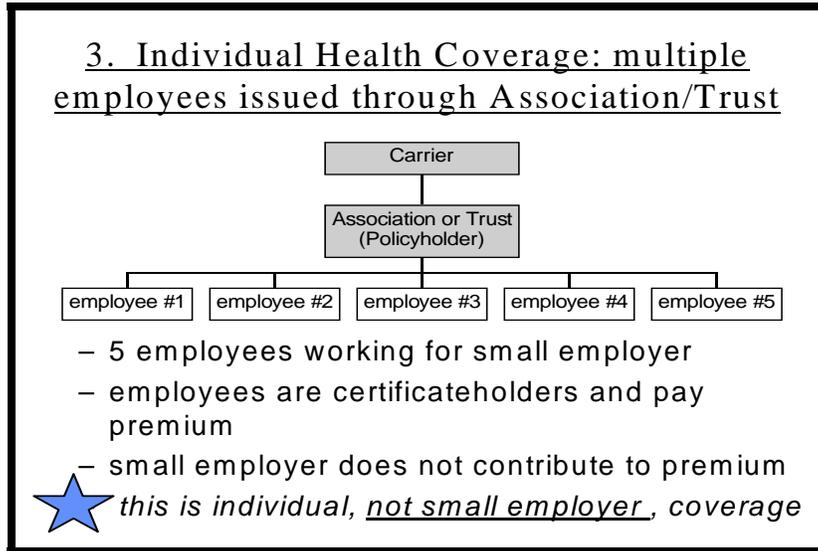


NUMBER 2 This illustration shows coverage of a small employer group through a trust or association group plan. This is a “small employer” because there are five eligible employees. The employer satisfies the 75% minimum participation requirement because four out of five employees are participating. Even though each employee receives a certificate of coverage under the association plan, this is small group, rather than individual coverage, because the employer contributes to the premium.



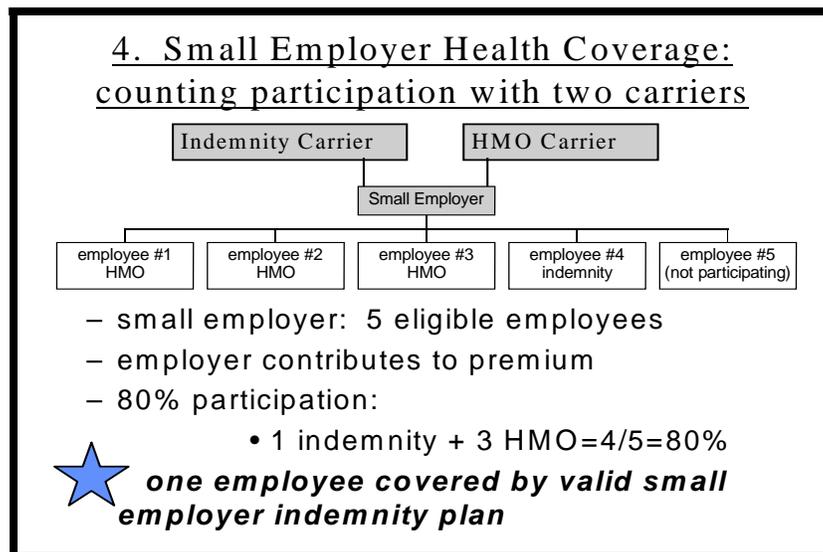
³ This document is produced by the N.J. Individual Health Coverage Program Board and Small Employer Health Benefits Program Board. Do not alter without permission.

NUMBER 3 In this illustration, 5 employees are covered by certificates issued from an association/trust, but the individual employees are paying the entire premium. With no employer contribution to the premium, each of the five employees is covered by an individual health benefits plan. The fact that the employees work for the same employer is of no consequence where the employer does not contribute to the premium.



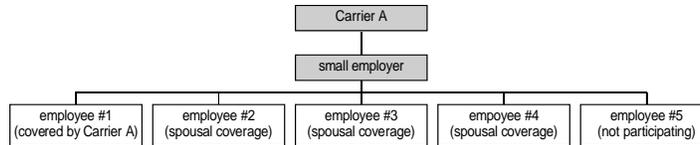
*** Coverage Of One Person By A Small Employer Group Plan**

NUMBER 4 In this illustration, the small employer pays a portion of the premium and offers employees the option to enroll in HMO or indemnity coverage. Since 80% of the employees are covered by the HMO and indemnity plans, counted together, the indemnity carrier is required to issue a small employer plan even though only one employee is covered by that plan.



NUMBER 5 In this illustration, the small employer pays a portion of the premium. Three employees are not covered by the small employer plan, but are counted as participating because they are covered by their spouses' plan offered by another employer. The remaining employee is entitled to be covered by a valid small employer plan because the employer's participation rate is counted as 80%.

5. Small Employer Health Coverage: counting spousal coverage toward participation



- small employer: 5 employees
- employer contributes to premium
- 80% participation: 4/5 employees
 - 1 covered by Carrier A
 - 3 covered by spouse's health plan (counted as participating)



1 employee covered by small employer plan

*** Husband And Wife Coverage By Individual Health Benefits Plan Or Small Employer Group Plan**

NUMBER 6 a. In the first example, the small employer pays a portion of the premium. The husband and wife, who are the sole full-time employees, are enrolled as separate employees in a valid small employer health benefits plan.

b. In the second example, a single certificate is issued to one employee, with the spouse receiving coverage as a dependent. The covered employee must receive individual coverage, even if the small employer pays a portion of the premium. The reason the couple may not receive group coverage as employee and dependent is that, while there are two full-time employees, only one employee is participating in the plan, resulting in only a 50% participation rate. Coverage by a spouse's health benefits plan cannot be counted toward participation if the spouse is covered by the same small employer health benefits plan.

