

NEW JERSEY  
**INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD**  
&  
**SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD**  
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**JOINT ADVISORY BULLETIN NUMBER 95-01**

TO: **ALL MEMBERS OF THE IHC AND SEH PROGRAMS**  
FROM: **IHC AND SEH PROGRAM BOARDS**  
RE: **COVERAGE BY ASSOCIATION 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 small employers in health benefits plans offered by associations. **This bulletin reiterates and elaborates upon advice contained in Joint Advisory Bulletin 95-01 issued in March of this year and is intended to clarify that carriers that cover individuals and small employers in association group plans must comply with the IHC and SEH Programs' rules.**

**I. COVERAGE OF INDIVIDUALS BY AN ASSOCIATION BEFORE AUGUST 1, 1993**

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."

Individual health benefits plans, as defined above, 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.<sup>1</sup> The law does

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<sup>1</sup> 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.

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 prior to August 1, 1993.

## **II. COVERAGE OF INDIVIDUALS BY AN ASSOCIATION OR TRUST PLAN ON OR AFTER AUGUST 1, 1993**

On or after August 1, 1993, “eligible persons” may only be covered by standard individual health benefits plans approved by the IHC Board. Carriers may offer these plans through an association. However, as long as the individual pays the premium for coverage under an association health benefits plan, the carrier issuing the plan must comply in all respects with the IHC Program rules.

Certain associations and carriers have attempted to circumvent the IHC Act by using association membership dues, fees, or other funds to supplement individual members’ premiums. Associations have asserted that they were making contributions to their members’ premiums, thereby removing them from the definition of “individual health benefits plan” set forth above. The IHC Board and Department of Insurance have viewed efforts to characterize membership dues or other fees that come from association members themselves as association contributions to premium as transparent and invalid attempts to circumvent the IHC Act. Licensed carriers should be aware such attempts to circumvent the law may result in fines and penalties. The IHC Board recommends that carriers seek a determination by the Board prior to issuing a plan to an association that may cover “eligible persons” or small employers.

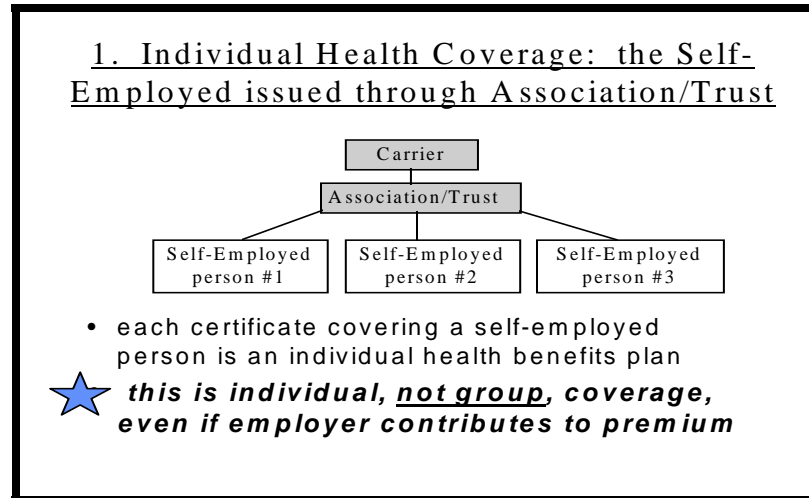
## **III. COVERAGE OF SMALL EMPLOYERS BY AN ASSOCIATION OR TRUST PLAN**

The SEH Act expressly applies to carriers that offer policies to associations or trusts of employers. N.J.S.A. 17B:27A-25(d). The SEH Act permitted associations to continue to enroll small employers in non-standard health benefits plans, as long as the association plan was in existence prior to January 1, 1994 and came into compliance with SEH Program rules on the first anniversary date of each small employer’s coverage occurring on or after September 11, 1994. Small employers covered by non-standard plans were permitted to renew them until the first anniversary date occurring on or after March 1, 1996

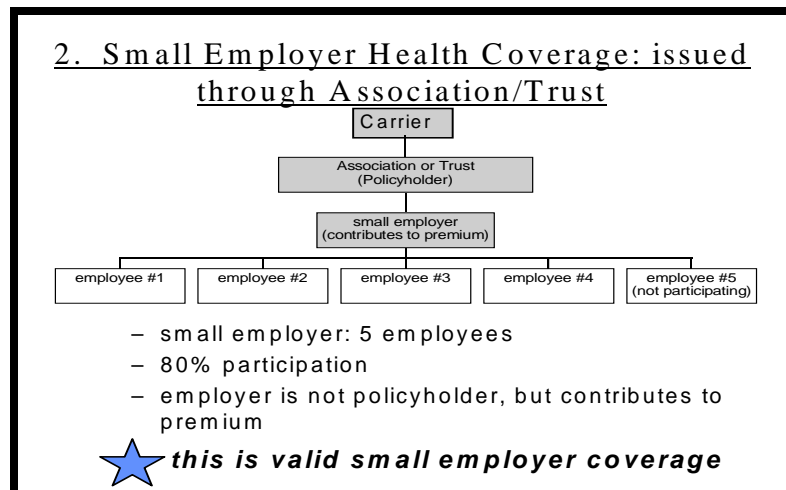
## Illustrations And Explanations<sup>2</sup>

### \* 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.

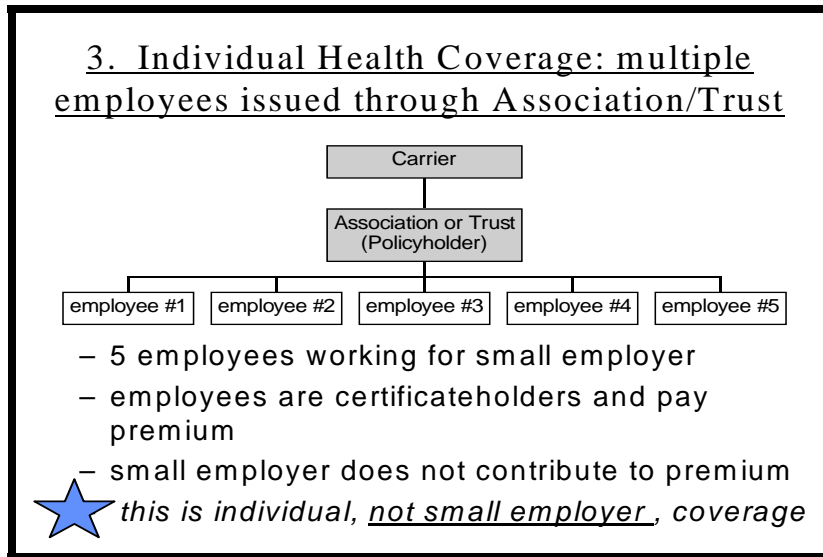


**NUMBER 2** This illustration shows coverage of a small employer group through a trust or association group plan. This is a “small employer” because there are five eligible employees. The employer satisfies the 75% minimum participation requirement because four out of five employees are participating. 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.



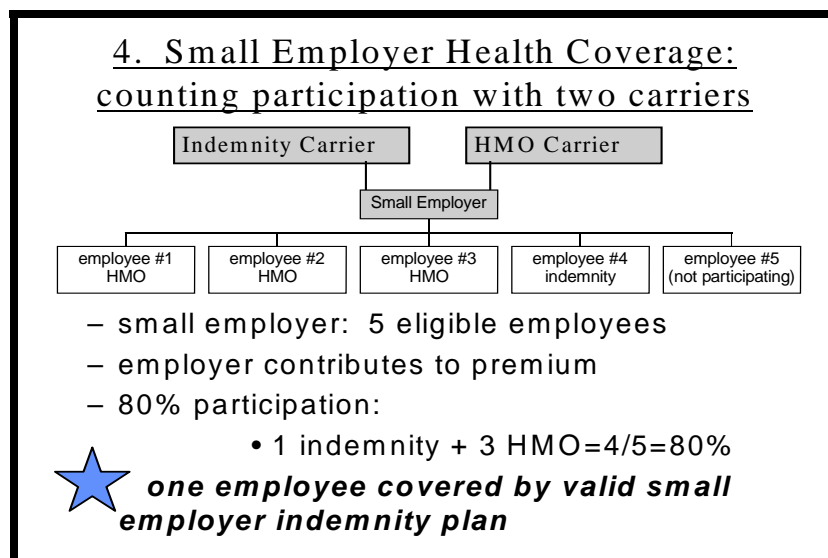
<sup>2</sup> This document is produced by the N.J. Individual Health Coverage Program Board and Small Employer Health Benefits Program Board. Do not alter without permission.

**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.



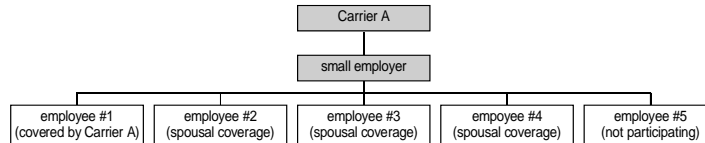
**\* Coverage Of One Person By A Small Employer Group Plan**

**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.

