

NEW JERSEY
SMALL EMPLOYER HEALTH BENEFITS PROGRAM

20 West State Street, 10th floor

CN 325

Trenton, NJ 08625

Phone: (609) 633-1887

Fax: (609) 633-2030

ADVISORY BULLETIN

97-SEH-04

To: SEH Program Members and Interested Parties
From: Wardell Sanders, Assistant Director
**Re: ADMINISTRATIVE COMPLIANCE WITH THE
FEDERAL HEALTH INSURANCE PORTABILITY AND
ACCOUNTABILITY ACT OF 1996**
Date: June 3, 1997

On August 21, 1996, the President signed into law the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. 104-191. HIPAA amended the Public Health Service Act ("PHS Act"), the Employee Retirement Income Security Act of 1974 ("ERISA"), and the Internal Revenue Code to provide for, among other things, improved portability and continuity of health benefits coverage in the group market. The federal government has also issued interim rules to implement HIPAA (62 Fed. Reg. 16,894 (1997)).

New Jersey has already enacted substantial reform measures in its small employer market which address portability and continuity of health benefits coverage. Nevertheless, HIPAA has and will have an effect on New Jersey's small group health coverage market. The New Jersey Small Employer Health Benefits ("SEH") Program Board anticipates that State legislative changes will be made to N.J.S.A. 17B:27A-17 et seq. (commonly referred to as the "SEH Act") to conform the SEH Act with HIPAA. The SEH Board plans to propose changes to its standard plans as soon as possible following State legislative amendments.

Carriers in New Jersey's small employer markets are each responsible for compliance with federal law. Where federal law preempts State law (which includes the SEH Act, regulations and standard health benefits plans), carriers will be expected to administratively comply with federal law. The standard SEH policy forms contain a "Conformity with Law" provision which alerts policy or contract holders that the plans must be administered in conformity with all applicable law. Since most of the HIPAA

group market reforms are effective beginning July 1, 1997, carriers will have to administer their New Jersey small group plans issued or renewed on or after that date consistent with the requirements of HIPAA that preempt State law.

Since the SEH Board has not yet acted to modify its standard health benefits plans to comply with HIPAA, carriers must administratively comply with federal law to the extent that it preempts State law. Carriers are not permitted to modify the standard health benefits plans to accommodate the requirements of HIPAA until authorized by the SEH Board to do so. Further, the compliance and variability rider described at N.J.A.C. 11:21-4.4 is designed to accommodate modifications to the standard forms promulgated by the SEH Board, and is neither designed nor intended to accommodate federal statutory changes. Therefore, carriers may not use a compliance and variability rider to incorporate HIPAA requirements. Additionally, the SEH Board does not believe that nonstandard optional benefit riders, permitted by N.J.S.A. 17B:27A-19i, are the correct vehicle for modifying the standard plans to comply with federal law. Rather, if a small employer applies for, or is covered under, a standard health benefits plan, the SEH Board recommends that the carrier provide notice to the applicant or policy or contract holder of the modifications to the administration of the health benefits plans that are required to conform the plan with federal law. Carriers that offer nonstandard health benefits plans may issue a similar notice, or may submit a filing pursuant to N.J.A.C. 11:21-11.7 to the New Jersey Department of Banking and Insurance to modify the nonstandard health benefits plans.