

NEW JERSEY
SMALL EMPLOYER HEALTH BENEFITS PROGRAM

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ADVISORY BULLETIN

97-SEH-07

To: SEH Program Members and Interested Parties
From: Wardell Sanders, Interim Executive Director
Re: LATE ENROLLEES
Date: June 26, 1997

AN HMO MAY NOT DELAY THE EFFECTIVE DATE OR ELIGIBILITY DATE OF A LATE ENROLLEE UNTIL AN "OPEN ENROLLMENT" PERIOD. ANY CARRIER THAT HAS DENIED IMMEDIATE COVERAGE TO A LATE ENROLLEE MUST CONTACT THOSE PERSONS AND OFFER COVERAGE TO SUCH PERSONS IMMEDIATELY.

The New Jersey Small Employer Health Benefits ("SEH") Program Board has received a number of complaints from brokers and consumers regarding the practice of some HMOs of denying coverage to an eligible employee or eligible dependent after the initial 30-day enrollment period, and informing the eligible employee or dependent that they may not enroll in the plan or be covered under the plan until a designated "open enrollment" period. Please be advised that an HMO may not delay the effective date¹ or eligibility date² of a late enrollee until an "open enrollment" period, but rather must provide coverage at the time of enrollment. A late enrollee, however, may be subject to a preexisting condition limitation period under certain circumstances as a result of failing to elect coverage during the initial 30-day enrollment period. Any carrier that has denied immediate coverage to a late enrollee must contact those persons and offer coverage to such persons immediately.

¹ The standard HMO contract defines "effective date" as "[t]he date on which coverage begins under this Contract for the Employer, or the date coverage begins under this Contract for a Member, as the context in which the term is used suggests.

² The standard HMO contract defines "employee eligibility date" as "(a) the date of employment; or the day after any applicable waiting period ends."

In considering this issue, the SEH Board examined the SEH Act and the standard HMO contract. Pursuant to the SEH Act, HMOs must offer coverage to all eligible employees and their dependents. Further, the standard HMO contract does not provide an exception for late enrollees to the guaranteed issuance requirement in the small group market. The enrollment provision in the standard HMO contract states:

We will not cover the Employee until the Employee enrolls and agrees to make the required payments, if any. If the Employee does this within [30] days of the Employee's Eligibility Date, coverage will start on the Employee's Eligibility Date.

If the Employee enrolls and agrees to make the required payments, if any:

- a) more than [30] days after the Employee's Eligibility Date; or
- b) after the Employee previously had coverage which ended because the Employee failed to make a required payment,

We will consider the Employee to be a Late Enrollee. Late Enrollees are subject to this Contract's Pre-Existing Conditions limitation.

This bulletin should not be interpreted to limit a carrier's ability to restrict the movement of an employee and any dependents from one health benefits plan sponsored by the employer to another health benefits plan sponsored by the same employer. In fact, the SEH Act specifically envisions such restrictions in the definition of a "late enrollee," which states:

An eligible employee or dependent also shall not be considered a late enrollee if the individual is employed by an employer which offers multiple health benefits plans and the individual elects a different plan during an open enrollment period.