

*NEW JERSEY*  
**SMALL EMPLOYER HEALTH BENEFITS PROGRAM**

20 West State Street, 10th floor

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**ADVISORY BULLETIN**

**97-SEH-08**

**To: SEH Program Members and Interested Parties**  
**From: Wardell Sanders, Interim Executive Director**  
**Re: Prescription Drug Formularies and Survey**  
**Date: July 17, 1997**

UNDER THE STANDARD SMALL EMPLOYER HEALTH BENEFITS PLANS  
AND STANDARD PRESCRIPTION DRUG RIDERS, CARRIERS MAY **NOT** USE A  
FORMULARY TO LIMIT OR EXCLUDE COVERAGE FOR PRESCRIPTION DRUGS.

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 carriers of using a formulary to limit or exclude coverage for prescription drugs. The standard health benefits plans and standard prescription drug riders provide coverage for prescription drugs so long as they are medically necessary and appropriate and prescribed by a provider acting within the scope of his or her license. The standard forms and riders do not mention the use of formularies to limit or exclude coverage, as is accomplished with a Closed Formulary, Selective Formulary, or an Open Formulary. As a result, under the standard small employer health benefits plans and standard prescription drug riders, carriers may **not** use a formulary to limit or exclude coverage for prescription drugs. Carriers that have imposed limitations or exclusions based on formularies, either directly or indirectly through a prescription drug service vendor, must discontinue the practice immediately.

The SEH Board is requiring carriers that have used a formulary to limit or exclude coverage for prescription drugs to take remedial actions to make consumers whole. Carriers that have used a formulary to limit or exclude coverage shall submit a proposed remediation plan, that would make consumers whole, to the Board at the address or fax noted above no later than **August 6, 1997**. Carriers that have used formularies to limit or exclude coverage that fail to contact the Board by **August 6, 1997** shall be subject to enforcement action.

While the standard forms and standard prescription drug riders do not currently provide for the use of a formulary to limit or exclude coverage, the SEH Board is interested in obtaining more information about formularies to determine whether it may be appropriate to

include text in the standard plans or riders which would address formularies. The Board is also in discussion with the Department of Banking and Insurance and Department of Health and Senior Services regarding the appropriateness of the use of formularies.

For carriers on the Board's mailing list, attached is a survey regarding formularies designed to obtain this information. Please complete and return the attached survey by **August 6, 1997**. Other interested parties are welcome to provide comments or information on the use of formularies to the Board.

**SEH Survey of Carriers on the Use of Prescription Drug Formularies**

Please complete the survey below and return by August 6, 1997 to:

Wardell Sanders  
SEH Program Board  
20 West State Street, 10th Fl.  
CN 325  
Trenton, NJ 08625  
or fax to: (609)633-2030

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**I. Respondent Information**

Carrier: \_\_\_\_\_

Name of respondent: \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

**II. Survey**

1. Do you currently use a formulary in other States? \_\_\_\_\_ Yes \_\_\_\_\_ No

2. If yes, if the effect is a reduction or exclusion in prescription drug coverage, how is a consumer advised of the limitation or exclusion on their coverage? For informational purposes, please attach copies of any marketing material or other documents relevant to this question.

3. If a formulary is used, what is the relationship between formularies and benefits?

\_\_\_\_\_ "Closed Formulary" (where the formulary includes only one drug within a drug category; non-formulary drugs are not covered)

\_\_\_\_\_ "Open Formulary" (where the formulary may include one or more drugs within a drug category; both formulary and non-formulary benefits are eligible for benefits, but at a different rates)

\_\_\_\_\_ "Selective Formulary" (where the formulary includes more than one drug within a drug category; non-formulary drugs are not covered)

\_\_\_\_\_ no relationship (the formulary has no effect on benefits)

\_\_\_\_\_ Other, please explain:

4. Are you considering using a formulary in other States? \_\_\_\_\_ Yes \_\_\_\_\_ No

5. If yes, describe the anticipated relationship between formularies and benefits.

\_\_\_\_\_ “Closed Formulary” (where the formulary includes only one drug within a drug category; non-formulary drugs are not covered)

\_\_\_\_\_ “Open Formulary” (where the formulary may include one or more drugs within a drug category; both formulary and non-formulary benefits are eligible for benefits, but at a different rates)

\_\_\_\_\_ “Selective Formulary” (where the formulary includes more than one drug within a drug category; non-formulary drugs are not covered)

\_\_\_\_\_ no relationship (the formulary has no effect on benefits)

\_\_\_\_\_ Other, please explain:

6. Do you believe that formularies should be incorporated into the standard New Jersey small employer health benefits plans or riders? \_\_\_\_\_ Yes \_\_\_\_\_ No

7. If yes, what should be the relationship between formularies and benefits?

\_\_\_\_\_ “Closed Formulary” (where the formulary includes only one drug within a drug category; non-formulary drugs are not covered)

\_\_\_\_\_ “Open Formulary” (where the formulary may include one or more drugs within a drug category; both formulary and non-formulary benefits are eligible for benefits, but at a different rates)

\_\_\_\_\_ “Selective Formulary” (where the formulary includes more than one drug within a drug category; non-formulary drugs are not covered)

\_\_\_\_\_ no relationship (the formulary has no effect on benefits)

\_\_\_\_\_ Other, please explain:

Please provide any additional information which you believe may be of assistance to the SEH Board in determining whether prescription drug formularies should be permitted in the New Jersey small employer market.

[Carrier letterhead]

Dear [Small employer]:

[Carrier] has been advised by the New Jersey Small Employer Health Benefits (“SEH”) Program Board that under the standard small employer health benefits plans and standard prescription drug riders, carriers may **not** use a formulary to limit or exclude coverage for prescription drugs. The SEH Board noted that the standard health benefits plans and standard prescription drug riders provide coverage for prescription drugs so long as they are medically necessary and appropriate and prescribed by a provider acting within the scope of his or her license.

To ensure compliance with the Board’s interpretation of its standard policy forms and riders, small employers are being provided the opportunity to contact [carrier] regarding their prescription drug coverage if they believe their prescription drug benefits were limited or excluded as the result of the use by [carrier] of a formulary. This letter is to advise you that you may contact [Carrier] at [address and phone number] to request ?. Please provide the following information: [Carrier must insert the information it needs to make a determination of whether a formulary limited or excluded a benefit, and information it needs to make the consumer whole.].