INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

Individual Health Coverage Program

Individual Health Benefits Plans

Proposed Amendments: 11:20 Appendix Exhibits A and B.

Authorized By: New Jersey Individual Health Coverage Program Board, Ellen DeRosa, Executive Director.

Authority: N.J.S.A. 17B:27A-2 et seq.

Calendar Reference: See Summary below for an explanation of inapplicability of the calendar requirement.

Proposal Number: PRN 2015-.

As required by N.J.S.A. 17B:27A-16.1, interested parties may testify with respect to the standard health benefits plans set forth in N.J.A.C. 11:20 Appendix Exhibits A and B at a **public hearing** to be held at 9:00 A.M. on September 24, 2015 at the New Jersey Department of Banking and Insurance, 11th floor Conference Room, 20 West State Street, Trenton, New Jersey.

Submit comments by October 1, 2015 to:

Ellen DeRosa

Executive Director

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The agency proposal follows:

Summary

The Individual Health Coverage (IHC) Program was established in accordance with P.L. 1992, c. 161. The IHC Program is administered through a Board of Directors (Board). The primary functions of the IHC Program and its Board are the creation of standard health benefits plans (standard plans) to be offered in the individual market in New Jersey and the regulation of the individual health coverage market. There are five standard plans, which have been established through regulation, and are set forth in Exhibits A and B of the Appendix to N.J.A.C. 11:20, the rules for the IHC Program, along with Exhibit C, which provides explanations of how certain variables in the standard plans may be used by carriers.

Amendments to the standard plans set forth in Exhibits A and B.

As required by 45 CFR 156.115(a)(6) the IHC Program Board proposes amendments to the schedule pages and the Dental Benefits and Vision Benefit provisions such that pediatric dental and vision coverage no longer ends on the date the child turns age 19 but rather extends through the end of the month in which the child turns age 19.

The IHC Program Board proposes updating the variable text on the schedule pages to illustrate the increase in the maximum amount of maximum out of pocket for 2016 consistent with Federal requirements at 45 CFR 156.130. The schedule pages, as amended, illustrate a maximum amount of $6,850 which is the maximum amount permitted during 2016. As the maximum out of pocket increases each year under Federal law, the variable range for the maximum out of pocket amount permitted for the standard plans is intended to increase also.

The IHC Program Board proposes several amendments to address coverage for telemedicine, e-visits and virtual visits. All of the amendments appear as variable text which means carriers have the option to use or not use some or all of the new text. The new text defines each of these terms, allows the inclusion of these terms on the schedule page to allow carriers to specify any applicable cost sharing for each of these types of service, expands the practitioner charges section to explain that services provided as telemedicine visits, e-visits and virtual visits are covered under the plan, and modifies the exclusion for telephone consultations to create an exception for telemedicine, e-visits and virtual visits.

The IHC Program Board is proposing to amend the definition of dependent to address the age 26 limit and the categories of children who may qualify as dependents. With respect to the age 26 limit, the Board proposes the inclusion of variable text such that carriers may continue to define dependent as a child under the age of 26 which means the child ceases to be a dependent on his or her birthday or may allow the child to be considered a dependent through the end of the month in which the child turns age 26. The opportunity to consider a child a dependent through the end of the month will facilitate the opportunity to buy replacement coverage for the child without a lapse in coverage. Since carriers are required to allow first of the month effective dates, a child who turns age 26 on any date other than the end of the month would have a lapse in coverage if the replacement plan is not effective until the first of the month. With the option to allow an end of the month termination date, the child would have the opportunity for continuous coverage since the new plan could be effective the day after the dependent coverage ends. With respect to the categories of children who can qualify as dependents, the Board recognizes that for many years the standard plans have allowed coverage of children with a legal or blood relationship who are not otherwise eligible as dependents, provided the children reside in the

policyholder's household. The 2016 QHP Application Instructions released by the Centers for Medicare and Medicaid Services (CMS) state that plans that cover children cannot require the child dependent to live in the same household. Therefore, carriers issuing qualified health plans (QHPs) through the federally-facilitated marketplace (FFM) may not require children with a legal or blood relationship to reside in the same household. Removing the same-household requirement would mean a child could live in another household and may even live in another state and nevertheless be covered as a dependent. Therefore, the Board proposes making the legal and blood relationship text of the dependent definition variable such that carriers would not be required to include the text for plans sold through the FFM. Coverage for children with a legal or blood relationship would remain available for coverage not purchased through the FFM.

The IHC Board proposes an amendment to the definition of durable medical equipment, the durable medical equipment provision and the hearing aid provision to state that certain durable medical equipment and hearing aids are habilitative devices. 45 CFR 156.115(a)(5) requires coverage of habilitative devices. Since the term habilitative devices was not used in the standard plans, the Board is expanding the existing text of the durable medical equipment and hearing aid benefits to explain that these existing covered supplies are habilitative devices.

In addition, the IHC Program Board is proposing to amend the definition of eligible person to state that a person is not an eligible person if the person is covered for Medicare. The existing definition states that a person is not an eligible person if the person is eligible for Medicare. Thus the amendment changes the Medicare status from "eligible" for Medicare to "covered" for Medicare. Eligible for Medicare means a person has satisfied the requirements to be able to be covered for Medicare but has not yet signed up for Medicare whereas covered for Medicare means the person is not only eligible but has completed the enrollment for Medicare

and is in fact covered under Medicare. This amendment is necessitated by text in the February 20, 2015 Issuer letter from CMS which references the CMS FAQ Regarding Medicare and the marketplace dated August 28, 2014.

The IHC Board proposes an amendment to the definition of Primary Care Physician to replace the term with Primary Care Provider and to expand the list of providers who may be eligible to serve as Primary Care Providers consistent with N.J.A.C. 11:22-5.2.

The IHC Board proposes amending the definition of triggering event to include court orders of coverage as required by 45 CFR 155.420(b)(2)(v).

The IHC Board proposes amending the maximum out of pocket (MOOP) text used for plans issued as high deductible health plans to allow a single person covered under a family plan to satisfy the single MOOP rather than requiring the single person to satisfy the family MOOP. This amendment is required by Section 1302(c)(1) of the Patient Protection and Affordable Care Act (ACA) and the FAQs about ACA Implementation dated May 26, 2015.

IHC Rulemaking Procedures

The IHC Board is proposing these amendments in accordance with the special action process established at N.J.S.A. 17B:27A-16.1, as an alternative to the common rulemaking process specified at N.J.S.A. 52:14B-1 et seq. Pursuant to N.J.S.A. 17B:27A-16.1, the IHC Board may expedite adoption of certain actions, including modification of the IHC Program's health benefits plans and policy forms, if the IHC Board provides interested parties a minimum 20-day period during which to comment on the Board's intended action following notice of the intended action in three newspapers of general circulation, with instructions on how to obtain a detailed description of the intended action and the time, place, and manner by which interested

parties may present their views regarding the intended action. Concurrently, the IHC Board must forward notice of the intended action to the Office of Administrative Law (OAL) for publication in the New Jersey Register, although the comment period runs from the date the notice is submitted to the newspapers and OAL, not from the date of publication of the notice in the New Jersey Register. The IHC Board also sends notice of the intended action to affected trade and professional associations, carriers, and other interested persons who may request such notice. In addition, for intended modifications to the health benefits plans, the IHC Board must allow for testimony to be presented at a public hearing prior to adopting any such modifications. Subsequently, the IHC Board may adopt its intended action immediately upon the close of the specified comment period or close of a public hearing (whichever is later) by submitting the adopted action to the OAL for publication. The adopted action is effective upon the date of its submission to the OAL, or such later date as the Board may designate. If the Board does not respond to commenters as part of the notice of adoption, the Board will respond to the comments timely submitted within a reasonable period of time thereafter in a separately-prepared report which will be submitted to OAL for publication in the New Jersey Register. Pursuant to N.J.S.A. 17B:27A-51, all actions adopted by the Board are subject to the requirements of this special rulemaking procedure notwithstanding the provisions of the Administrative Procedure Act. As a result, the quarterly calendar requirement set forth at N.J.A.C. 1:30-3.1 is not applicable when the Board uses its special rulemaking procedures.

Social Impact

The IHC Board expects that the amendments to the termination of pediatric dental and pediatric vision coverage as well as the amendment to dependent termination at age 26 will have a positive social impact. Since replacement coverage is available for first of the month effective

dates, the amendments will allow persons to secure replacement coverage without any lapse in coverage.

The IHC Board expects a positive social impact with respect to the options for telemedicine, e-visits and virtual visits if carriers elect to include one or more of these options in the plans. These options allow patients to receive immediate medical advice from a doctor so they can make timely and informed decisions as to care.

The proposed amendments to the dependent definition with respect to legal and blood relationships will have a neutral social impact. Coverage of children with a legal or blood relationship who reside in the household will remain available outside the FFM. The coverage of children with a legal or blood relationship will cease to be available for coverage bought through the FFM.

The proposed amendment to identify existing items that qualify as habilitative devices will not have social impact. The amendment is definitional and not an amendment to covered services.

The proposed amendment to the definition of eligible person is expected to have a neutral social impact. While on its face it appears more people might be eligible to buy individual coverage, the consequences of electing individual coverage rather than a Medicare Supplement plan are severe. Thus, the Board expects few if any persons who are eligible for individual coverage will elect such coverage.

The proposed amendment to the triggering event definition will have a positive social impact in that persons eligible via court order will have the opportunity to immediately secure coverage.

The proposed amendment to the maximum out of pocket for high deductible plans will have a positive social impact on consumers. Consumers covered under family plans who incurred significant medical expenses have been unable to receive full benefits because their personal expenses did not satisfy a family level maximum out of pocket. The amendment will enable individual members of a family to reach full benefits more quickly.

Economic Impact

The IHC Board expects a slight positive economic impact as a result of amendments to allow coverage for telemedicine, e-visits and virtual visits. To the extent these services could alleviate the need for a consumer to take time off from work to go to a doctor the consumer can save time and the cost associated with a visit.

The IHC Board expects a slight positive economic impact as a result of amendments to the date coverage ends. With coverage ending at the end of the month there will be less chance that the child will have a lapse in coverage. Assuming there will be no gap between when coverage ends and when replacement coverage is secured, consumers will not incur out of pocket costs while uninsured.

The IHC Board recognizes that the amendment to the dependent definition addressing children with legal or blood relationships would have a negative economic impact on families that have covered such children if the families already covered at least three children such that the inclusion of the child with a legal or blood relationship resulted in no additional premium. If the children with a legal or blood relationship are not covered under that family policy the coverage would have to be purchased separately.

The IHC Board expects no economic impact as a result of the remaining changes to the definitions.

The IHC Board expects positive economic impact to consumers who purchase family coverage under a high deductible health plan. The opportunity to satisfy a single level maximum out of pocket will mean individuals in a family will be eligible for full benefits sooner than if they had to wait for the family maximum out of pocket to be satisfied. They will thus incur less out of pocket costs.

Federal Standards Statement

State agencies that propose to adopt or amend State rules that exceed Federal standards regarding the same subject matter are required to include in the rulemaking document a Federal standards analysis. These proposed amendments are subject to Federal requirements addressing certain standards for health insurance contracts. In addition, the proposed amendment regarding the definition of eligible person is subject to Federal guidance regarding Medicare as set forth in the FAQ Regarding Medicare and the Marketplace updated August 28, 2014 and the proposed amendment regarding the calculation of the maximum out of pocket is subject to Section 1302(c)(1) of the ACA. The IHC Board does not believe the proposed amendments exceed the Federal requirements.

Jobs Impact

The IHC Board does not anticipate that any jobs will be generated or lost as a result of the proposed amendments. Commenters may submit data or studies on the potential jobs impact of the proposed amendments together with their comments on other aspects of the proposal.

Agriculture Industry Impact

The IHC Board does not believe the proposed amendments will have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The IHC Board does not believe the proposed amendments apply to "small businesses," as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but acknowledges the possibility that one or more carriers might meet that definition. The proposed amendments do not establish new or additional reporting or recordkeeping requirements, but have the effect of establishing new compliance requirements, as described in the Summary above.

No differentiation in compliance requirements is provided based on business size. The requirements of and the goals to be achieved by the Federal law in question does not vary based on business size of a carrier, and the IHC Board would not be at liberty to make such a distinction even if the IHC Board were to consider such a distinction warranted. Accordingly, the proposed amendments provide no differentiation in compliance requirements based on business size. No additional professional services would have to be employed in order to comply with the proposed amendments.

Housing Affordability Impact Analysis

The IHC Board does not believe the proposed amendments will have an impact on housing affordability in this State in that the proposed amendments relate to the benefit levels and terms of standard health benefits plans offered in New Jersey for purchase by individuals.

Smart Growth Development Impact Analysis

The IHC Board does not believe the proposed amendments will have an impact on the number of housing units or the availability of affordable housing in the State, or that the proposed amendments will have an effect on smart growth development in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments relate to the benefit levels and terms of standard health benefits plans offered in New Jersey.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

APPENDIX

OFFICE OF ADMINISTRATIVE LAW NOTE: The New Jersey Individual Health Coverage Program Board is proposing amendments to N.J.A.C. 11:20 Appendix Exhibits A and B. Pursuant to N.J.S.A. 52:14B-7(c) and N.J.A.C. 1:30-5.2(a)2, the Exhibits as proposed are not published herein, but may be reviewed by contacting:

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