

**INSURANCE
NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD**

Individual Health Coverage Program

Proposed Amendments: N.J.A.C. 11:20-1.2 and N.J.A.C. 11:20 Appendix Exhibits A, B and F.

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

Authority: N.J.S.A. 17B:27A-2 et seq. and P.L. 2006, c. 103

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2008-

Interested persons may testify with respect to the standard health benefits plans and specimen Basic and Essential plan, set forth in Appendix Exhibits A, B and F to N.J.A.C. 11:20 at a public hearing to be held on Monday, March 17, 2008, at 9:00 a.m. at the New Jersey Department of Banking and Insurance, 11th floor Conference Room, 20 West State Street, Trenton, New Jersey.

Submit comments by April 2, 2008 to:

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The agency proposal follows:

Summary

On February 19, 2007, P.L. 2006, c. 103 (Chapter 103) became effective, establishing civil unions as a recognized legal relationship in the State of New Jersey, and conferring upon individuals who enter into a civil union (civil union partners) legal rights substantially similar to or the same as those inuring to married spouses. Specifically, Chapter 103 provides in section 4a

(as codified, N.J.S.A. 37:1-31) that “civil union couples shall have all of the same benefits, protections and responsibilities under law, whether they derive from statute, administrative or court rule, public policy, common law or any other source of civil law, as are granted to spouses in a marriage.” Section 5 of Chapter 103 (as codified, N.J.S.A. 37:1-32) sets forth a list of some of the benefits, protections and responsibilities civil union partners and marital spouses have in common, including “laws relating to insurance, health and pension benefits” in subparagraph e.

In order to bring the standard individual health benefits plans, as well as the specimen Basic & Essential plan into compliance with the intentions of Chapter 103, the Individual Health Coverage (IHC) Program Board, the agency charged by the Legislature with implementing and regulating hospital and medical coverage for the individual (non-group) market in New Jersey pursuant to P.L. 1992, c. 161 (codified at N.J.S.A. 17B:27A-2 et seq.), as subsequently amended, proposes amending the language of the standard individual plan forms and the specimen Basic & Essential plan to make it clear that civil union partners are required to be treated the same as a spouse under the terms of the policies issued pursuant to these plans. The Board is also proposing amendments to definitions in the rules regulating the IHC Program to incorporate references to civil union partners, as appropriate.

In summary, the IHC Board proposes an amendment to the definition of “Dependent” in N.J.A.C. 11:20-1.2 and in the standard plans to state that “Dependent” includes a civil union partner, as defined in P.L. 2006, c. 103. The definition also addresses same sex relationships from other jurisdictions that provide substantially all of the rights and benefits of marriage. To facilitate understanding of the multi-part definition, the Board proposes dividing the text into numbered items. The Board is proposing an amendment at N.J.A.C. 11:20-1.2 and in the standard plans to the definition of an unmarried Dependent child to add a reference to step-children (a category of Dependent that has been included in the standard health benefits plans

since inception, but heretofore not specifically mentioned at N.J.A.C. 11:20-1.2), and to include the child of a civil union partner under the same terms and conditions as the coverage afforded to step-children. The Board also is proposing an amendment at N.J.A.C. 11:20-1.2 to the definition of Family Unit to include a civil union partner. To facilitate understanding of the multi-part definition, the Board proposes dividing the text into numbered items. The Board is proposing amendments to the definition of Spouse in the standard plans and the specimen Basic and Essential plan to include partners that have entered into a civil union pursuant to Chapter 103 as well as individuals who have entered into same sex legal relationships recognized in other jurisdictions when those legal relationships provide substantially all of the rights and benefits of marriage. The Board is proposing to amend the Adding Dependents provision of the standard plans to address adding a Spouse (partner) through a civil union. The Board is also proposing to amend the Conversion Rights for Former Spouses provision to address conversion rights in the event a civil union is dissolved.

Since the proposed amendments to the standard plans affect only specific sections of the standard policy forms, carriers will be given the option to implement the forms changes by using the Compliance and Variability Rider set forth at N.J.A.C. 11:20 Appendix Exhibit D or by incorporating the change into the standard plans and the Basic and Essential plan. Upon adoption of the proposed amendments, the IHC Board will issue an Advisory Bulletin setting forth the text to be included on the Compliance and Variability rider by those carriers that choose that option.

IHC Rulemaking Procedures

The IHC Board proposes these amendments pursuant to N.J.S.A. 17B:27A-16.1, which provides a special procedure whereby the IHC Board may adopt certain actions. Pursuant to this procedure, the Board is required to publish notice of its intended action in three newspapers of

general circulation, which notice shall include procedures for obtaining a detailed description of the intended action and the time, place and manner by which interested persons may present their views regarding the intended action. Notice of the intended action also is required to be sent to affected trade and professional associations, carriers, and other interested persons who may request such notice. Concurrently, the Board is required to forward the notice of the intended action to the Office of Administrative Law (“OAL”) for publication in the New Jersey Register. The Board must provide a minimum 20-day period from the date of notice for all interested persons to submit their written comments on the intended action to the Board.

Pursuant to N.J.S.A. 17B:27A-16.1, the Board may adopt its intended action immediately upon the close of the specified comment period by submitting the adopted action to the OAL. If the Board elects to adopt the action immediately upon the close of the comment period, it shall nevertheless respond to the comments timely submitted within a reasonable period of time thereafter. The Board shall prepare a report for public distribution, and publication by the OAL in the New Jersey Register. The report shall include a list of commenters, their relevant comments, and the Board’s responses.

Please note that the unique provisions of N.J.S.A. 17B:27A-16.1 may result in the publication of this rule proposal in the *New Jersey Register* after the 20-day comment period has concluded.

Social Impact

The IHC Board is proposing amendments to the standard plans and the specimen Basic & Essential plan to clarify that an individual contractholder has the same right to obtain coverage for his or her civil union partner as he or she would for his or her spouse, consistent with the requirements of Chapter 103. While Chapter 103 has full force and effect even if the Board does not revise the plan forms, the Board anticipates that the proposed amendments will eliminate any

confusion regarding eligibility of civil union partners. The Board believes that this, in turn, will discourage inappropriate denials, and perhaps encourage more civil union partners to seek coverage.

Economic Impact

The Board believes that the proposed amendments will have an adverse economic impact upon carriers offering individual health benefits plans in this State, albeit a relatively modest one. Carriers are likely to incur costs associated with training appropriate personnel regarding eligibility of civil union partners and developing any administrative forms the carriers believe necessary. Carriers will also incur costs associated with producing revised forms for new policy issues, and updating their forms and the policies they have previously issued. The costs incurred will depend on each carrier's particular situation and business operations, and whether a carrier chooses to replace existing policies or add riders to the policies. These costs, however, are attendant to the implementation of a State mandate and are far outweighed by the benefits to persons covered by the standard IHC plans and Basic and Essential plans.

The Board expects insurance producers may experience a modest adverse economic impact from the proposed amendments. Producers will be required to learn and understand the law and the changes in the standard contracts and Basic & Essential plan in order to serve their clients.

The Board expects no discernible positive or negative economic impact for policyholders. While policyholders will be permitted to cover a civil union partner as a dependent, there may be no economic advantage to them in purchasing one policy covering two adults as compared to purchasing two single person plans, because current rates in the individual market are not typically structured to provide any discount for two adults covered under one policy. There may

or may not be some slight advantage to the purchase of one policy rather than two with respect to cost-sharing requirements, depending upon policy options chosen.

Federal Standards Statement

The Board is not proposing these amendments under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements as set forth at N.J.A.C. 1:30-5.1(c)4. Accordingly, no Federal Standards Statement is required.

Jobs Impact

The Board does not expect the proposed amendments to result in the generation or loss of jobs in the State if they take effect.

Agriculture Industry Impact

Pursuant to N.J.S.A. 4:1C-1 et seq., the Right to Farm Act, and N.J.S.A. 52:14B-4(a) of the Administrative Procedure Act, the Board does not expect any agriculture industry impact from the proposed amendments.

Regulatory Flexibility Analysis

The Board believes that all carriers subject to these rules have in excess of 100 employees or are located outside of the State of New Jersey. Therefore, a regulatory flexibility analysis is not required. However, to the extent that any carrier might be considered a small business under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the following analysis would apply.

All carriers to whom these rules apply are required to bear any costs associated with complying with the requirements of the rules. The requirements and costs are discussed under

the Summary and Economic Impact above. To the extent that these rules apply to small businesses, they may have a greater impact because small businesses may be required to devote proportionately more staff and financial resources to achieve compliance. The Board believes, however, that any additional costs would not pose an undue burden because the information required is readily available to carriers.

The Individual Health Coverage Program Act, N.J.S.A. 17B:27A-2 et seq., provides no different compliance requirements based on business size. The rules at N.J.A.C. 11:20 establish procedures and standards for carriers to meet their obligations pursuant to the Act, and the fair, reasonable and equitable administration of the IHC Program pursuant to N.J.S.A. 17B:27A-2 et seq. All of the required changes to a carrier's business fall within the normal functions a carrier performs in complying with any State insurance law or regulations. An exemption from the policy form changes for certain carriers that are small businesses would be inappropriate because such an exemption would permit the sale of non-conforming forms in an otherwise standardized market. Accordingly, these proposed rules provide no differentiation in compliance requirements based on business size.

Smart Growth Impact Statement

The proposed new rules will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

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

11:20-1.2 Definitions

...

"Dependent" means:

- 1. the applicant's spouse; or**

- 2. the applicant's same-gender domestic partner as that term is defined in P.L. 2003, c. 246, or**
- 3. the applicant's civil union partner pursuant to P.L. 2006, c. 103 as well as same sex relationships recognized in other jurisdictions if such relationships provide substantially all of the rights and benefits of marriage;**
- 4. a child or step child of the applicant;**
- 5. a child of [the applicant or]the applicant's domestic partner subject to applicable terms of the individual health benefits plan;**
- 6. a child of the applicant's civil union partner subject to applicable terms of the individual health benefits plan.**

...

"Family unit" means:

- 1. a legally married man and woman; [or]**
- 2. a person and his or her same-gender civil union partner;**
- 3. a person and his or her same gender domestic partner;**
- 4. a legally married man and woman and their dependent children;**
- 5. [or] a person and his or her same-gender civil union partner and their dependent children as the term dependent is defined in the individual health benefits plan; or**
- 6. A person and his or her same gender domestic partner and their dependent child(ren), as the term dependent is defined in the individual health benefits plan;**
- 7. an adult and his or her dependent child(ren), as the term dependent is defined in the individual health benefits plan, who are members of the same household;**
- 8. and dependent children only who are members of the same household as the term dependent is defined in the individual health benefits plan.**

Date

Ellen DeRosa, Executive Director