

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

**Small Employer Health Benefits Program**

**Proposed Amendments: N.J.A.C. 11:21 Appendix Exhibits A, F, G, V, W, Y, HH and II.**

Authorized By: New Jersey Small Employer Health Benefits Program Board, Wardell Sanders,  
Executive Director

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

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

Proposal number: PRN-2005-

Interested persons may testify with respect to the standard health benefits plans, set forth in  
Appendix Exhibits A, F, G, V, W, Y, HH and II to N.J.A.C. 11:21 at a public hearing to be held  
on August 9, 2005 at 9:00 a.m. at the New Jersey Department of Banking and Insurance, Room  
220, 20 West State Street, Trenton, New Jersey.

Submit comments by August 9, 2005 to:

Ellen DeRosa  
Deputy Executive Director  
New Jersey Small Employer Health Benefits Program Board  
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The agency proposal follows:

**Summary**

The SEH Program Board was charged by the Legislature with implementing and  
regulating the reformed small employer health benefits coverage market pursuant to P.L. 1992,  
c.162 as amended, and codified at N.J.S.A. 17B:27A-17 et seq. (the "SEH Act"). P.L. 2004,  
c.162, enacted on December 7, 2004, amended the SEH Act by modifying N.J.S.A. 17B:27A-27,  
a provision providing an option for continued health coverage for certain terminated employees

and their dependents. P.L.2004, c.162 generally expanded the duration of the continuation period and expanded the eligible classes of continuees. On February 23, 2005, the SEH Board issued Advisory Bulletin 05-SEH-01, which set forth in question and answer format answers to commonly asked questions.

The current standard certificates and evidences of coverage documents include a provision outlining the New Jersey Group Continuation Rights. This provision addresses the statutory requirement that, “Notice shall be provided to employees in the certificate of coverage prepared for employees by the carrier on or about the commencement of coverage.” N.J.S.A. 17B:27A-27e. Due to the passage of P.L. 2004, c.162, the notice provisions in the certificate and evidence of coverage need to be updated to reflect the current rules with respect to New Jersey Group Continuation Rights.

This rule proposal deletes the provision contained in standard health benefits Plans A through E, HMO and HMO-POS and replaces it with text which provides continuation rights for employees in the event of termination of employment or reduction in hours to fewer than 25 hours per week, and for dependents in the event of death of the employee, divorce, termination of domestic partnership or for a dependent child, ceasing to be an eligible dependent. An employee may continue coverage for up to 18 months, except that in some instances of disability, the employee may continue coverage for up to 29 months. In the case of a dependent, coverage may be continued up to 36 months.

The proposed changes also include an amendment to the “Coordination Among Continuation Rights Sections” provision of contract, certificates, and evidences of coverage to clarify that New Jersey continuation applies only to persons for whom COBRA continuation rights are not available.

Since the amendments being proposed affect only a specific section of the standard policy forms, carriers may elect to implement the forms changes using the Compliance and Variability Rider set forth at N.J.A.C. 11:21 Appendix Exhibit T or may incorporate the change into the standard contracts, certificates, and evidence of coverage.

### **SEH Rulemaking Procedures**

The SEH Board proposes these amendments pursuant to the procedures set forth in N.J.S.A. 17B:27A-51, which provide a special procedure whereby the SEH 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 for all interested persons to submit their written comments on the intended action to the Board.

Pursuant to N.J.S.A. 17B:27A-51, 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.

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.

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 comment period has concluded.

### **Social Impact**

The amendments to the standard plans to provide for continuation of coverage for employees as well as dependents, as required by P.L. 2004, c. 162, will have a positive impact on persons whose coverage under the standard small employer plans would terminate in that the continuation provision affords them the opportunity to maintain group benefits for limited period. Although the amendments may be perceived by some employers as burdensome, they are necessary to comply with the requirements of P.L. 2004, c. 162.

### **Economic Impact**

The proposed amendments will have an impact on carriers offering small employer health benefits plans in this State. Member carriers will be required to bear the administrative costs associated with complying with the requirements P.L. 2004, c. 162. These carrier costs will include costs associated with training appropriate personnel regarding the continuation rights and developing any administrative forms the carriers believe necessary. These costs, however, are attendant to the continued implementation of a State mandate and are far outweighed by the benefits to small employers and their employees covered by the standard SEH plans.

Insurance producers may be modestly affected by the proposed rules. They will be required to learn and understand the changes in the law and the changes in the standard contracts in order to serve their clients.

#### **Federal Standards Statement**

The proposed rules are intended to comply with State law, and do not impact or expand upon the requirements set forth in any Federal law.

#### **Jobs Impact**

The proposed amendments are not expected to result in the generation or loss of jobs in the State if they were to take effect.

#### **Agriculture Industry Impact**

The proposed amendments have no impact on the agriculture industry.

#### **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 in that 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 Small Employer Health Benefits Act provides no different compliance requirements based on business size. The rules at N.J.A.C. 11:21 establish procedures and standards for carriers to meet their obligations pursuant to the Act, and the fair, reasonable and equitable administration of the SEH Program pursuant to N.J.S.A. 17B:27A-17 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 amendments will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

**Full text** of the proposed amendments to the New Jersey Group Continuation Rights provision is contained in standard plans A-E, HMO and HMO-POS, in Appendix Exhibits A, F, G, V, W, Y, HH and II.

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Date

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Wardell Sanders, Executive Director