

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

SMALL EMPLOYER HEALTH BENEFITS PROGRAM

Small Employer Health Benefit Plans

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

Authorized By: New Jersey Small Employer Health Benefits Program Board of Directors (Ellen DeRosa, Executive Director).

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

Proposed: September 23, 2015.

Adopted: October 21, 2015 by the New Jersey Small Employer Health Benefits Program Board, Ellen DeRosa, Executive Director

Filed: October 22, 2015 as R. 2015 d. ____ **without change, but with proposed Appendix Exhibit I not adopted**

Effective Date: January 1, 2016

Operative Date: January 1, 2016

Expiration Date:

Summary of Hearing Officer's Recommendations and Agency Responses:

The New Jersey Small Employer Health Benefits Program Board (SEH Board) held a hearing on Thursday, October 1, 2015 at 9:00 A.M. at the Department of Banking and Insurance, 11th floor Conference Room, 20 West State Street, Trenton, New Jersey to receive testimony with respect to the standard health benefits plans, set forth in Exhibits F, G, W, Y, HH and II of the Appendix to N.J.A.C. 11:21. Ellen DeRosa, Executive Director of the SEH Board, served as hearing officer.

Mishael Azam of the Medical Society of New Jersey (MSNJ) attended the hearing and offered testimony.

Ms. Azam stated that the MSNJ will submit written comments in addition to providing brief oral testimony. She stated that MSNJ is concerned with the proposed definitions and coverage for telemedicine, e-visits and virtual visits. She noted that regulations of the Board of Medical Examiners (BME) require that a patient have had an in person visit with a physician before a prescription may be written. She stated that MSNJ wants to ensure that payors comply with that requirement.

No additional persons came to the hearing. The hearing officer made no recommendations regarding the proposed amendments. The hearing record may be reviewed by contacting Ellen DeRosa, Executive Director, New Jersey Small Employer Health Benefits Program Board, P.O. Box 325, Trenton, NJ 08625-0325.

Summary of Public Comments and Agency Responses:

The SEH Board accepted comments on the proposal through October 14, 2015. Melinda Martinson provided comments on behalf of MSNJ.

1. COMMENT: The Commenter supports the proposal to permit reimbursement for telemedicine services rendered by physicians.

RESPONSE: The SEH Board acknowledges the support of the proposed amendments. The SEH Board notes that the terms and conditions of reimbursement to physicians are established in provider contracts and not the health benefit plan.

2. COMMENT: The Commenter commends the delineation of three types of activity: telemedicine, e-visits and virtual visits.

RESPONSE: The SEH Board acknowledges the support of the proposed definitions of telemedicine, e-visits and virtual visits. The SEH Board takes this opportunity to reiterate that the definitions were proposed as variable text. Thus a Carrier issuing small employer plans may select which term(s), if any, to include.

3. COMMENT: The Commenter referred to physician's professional rules of practice set forth at N.J.A.C. 13:35-7.1A which forbids the issuance of a prescription by a physician unless the physician has conducted a contemporaneous physical examination must be incorporated into the provision of telemedicine. The Commenter noted that even after a relationship has been established the practitioner must use sound medical judgment before issuing a new prescription without a new examination, referencing N.J.A.C. 13:35-7.1A(b)(4).

RESPONSE: The SEH Board takes no position with respect to the comment. Health care providers rendering services covered under the SEH Board's standard plans are subject to the regulations of the BME or other licensing board(s) that regulate a specific provider's scope of practice. The SEH Board notes that the policy forms issued to employers and the certificates issued to employees set forth insurance benefits and requirements associated with insurance; these documents do not regulate the licensing or scope of practice of the various health care providers who render services that are covered under the terms of the standard plans. The SEH Board refers the Commenter to the BME for any discussion concerning the regulation of telemedicine. No change is being made in response to this comment.

4. COMMENT: The Commenter noted that the proposed definition of e-visit states that the patient has an established relationship with the provider and requested that the definitions of telemedicine and virtual visit be amended to similarly require that the patient have an established relationship with the provider.

RESPONSE: The Commenter correctly noted a difference in the definitions. The difference was intended. Although the three definitions address visits with providers that are not in-person visits, the definitions may accommodate slightly different arrangements. The e-visit definition is the most restrictive in that it limits providers of the service to the same network of in-network providers a member would use for an in-person visit. The definitions of telemedicine and virtual visit do not include such a restriction. Rather, these definitions contemplate potential alternate arrangements for the services. The SEH Board is aware of companies that provide these types of services. No change is being made in response to this comment.

5. COMMENT: The Commenter suggested that if the telemedicine services are provided by a practitioner other than the member's treating physician, the Board require identification of the patient's primary care provider (PCP) and that the telemedicine services be coordinated with and documented with the primary care provider so as to avoid fragmentation of care.

RESPONSE: The SEH Board takes no position with respect to the comment. The Commenter is asking the SEH Board to impose a requirement that is beyond the authority of the SEH Board because the SEH Board does not have jurisdiction over providers. The SEH Board suggests that the Commenter address this comment with the BME. Furthermore, even if the SEH Board did have such authority, the SEH Board notes that while carriers offer many plans that require the selection of a PCP, carriers also offer plans that do not require such selection. Therefore any oversight of coordination with a PCP would be limited to plans under which a member has a PCP. No change is being made in response to this comment.

6. COMMENT: The Commenter suggested that the SEH rules also require that providers delivering telemedicine services be licensed in the state in which the patient receives

services; providers delivering telemedicine services abide by state licensure laws and state medical practice laws; the delivery of telemedicine services be consistent with the scope of the practice laws of the state in which the patient receives services; telemedicine services follow evidence-based practice guidelines; and telemedicine services be properly documented to the patient and PCP if the practitioner providing telemedicine services is not the PCP.

RESPONSE: The SEH Board takes no position with respect to the comment. The SEH Board does not regulate the practice of medicine in New Jersey. The suggested requirements are thus beyond the SEH Board's regulatory authority. The SEH Board refers the Commenter to the BME for any discussion concerning requirements that apply to practitioners offering telemedicine services. No change is being made in response to this comment.

Agency Initiated Changes

The SEH Board proposed a new rider set forth in proposed Exhibit I. The text of the rider provided benefits for the treatment of infertility as required by the definition at N.J.S.A. 17B:27-46.1x which applies to employers with 50 or more employees. As explained in the proposal, the benefits required by N.J.S.A. 17B:27-46.1x had to be made available to all small employers as required by the guaranteed issue requirements of 45 CFR 147.104. Under the Affordable Care Act, the definition of a "small group" employer was set to expand to 1-100 employees in 2016 and thus any benefits made available to employers with 51 or more employees would have had to have been made available to employers with fewer than 51 employees. The infertility benefits mandated by N.J.S.A. 17B:27-46.1x would have been made available to small employers with 1 – 100 employees. On October 7, 2015 the "Protecting Affordable Coverage for Employees Act" ("PACE Act), Pub. L. 114-60 was signed into law.

The PACE Act eliminated that mandatory expansion to 100 employees and kept the definition of “small group” at 50 or fewer employees. Since the rider was proposed expressly to address the requirements of N.J.S.A. 17B:27-46.1x, which applies to employers with greater than 50 employees and the definition of small employer is no longer expanding to include employers with up to 100 employees, the rider set forth in proposed Appendix Exhibit I is no longer necessary. The SEH Board is therefore not adopting Appendix Exhibit I.

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 adopted amendments are subject to Federal requirements addressing certain standards for health insurance contracts. The SEH Board does not believe the adopted amendments exceed the Federal requirements.