

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE

SMALL EMPLOYER HEALTH BENEFITS PROGRAM

Amendments to the Standard Plans to Comply with State and Federal Law and Addition of Alternate Delivery System Language

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

Proposed: October 6, 2010 at 42 N.J.R. 11(2)

Adopted: November 17, 2010 by the New Jersey Small Employer Health Benefits Program Board, Ellen DeRosa, Executive Director.

Filed: _____ as R. 2010 d. ____ **without change**

Authority: N.J.S.A. 17B:27A-17 et seq.; P.L. 2008, c. 126; P.L. 2009, c. 115

Effective Date: November 18, 2010.

Operative Date: April 1, 2011

Expiration Date: established by N.J.A.C. 11:21

Summary of Hearing Officer Recommendations and Agency Responses:

The New Jersey Small Employer Health Benefits (SEH) Program Board held a hearing on Wednesday October 20, 2010 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 proposed amendments to the standard health benefits plans set forth in N.J.A.C. 11:21 as Appendix Exhibits A, F, G, O, V, W, Y, HH and II. Ellen DeRosa, Executive Director of the SEH Program Board, served as hearing officer. No testimony was provided during 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:

No comments were received.

Federal Standards Analysis

State agencies that propose to adopt or amend 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 benefits and terms of health insurance contracts in PPACA and MHPAEA. Although the SEH Board is not actively seeking to exceed the Federal requirements, arguably, the State standards may do so. The Federal PPACA (through the addition of section 2714 to the Public Health Services Act, which is incorporated into the Employee Retirement Income Security Act) requires that coverage for child dependents be extended up to age 26, based solely on the relationship of the child to the policyholder. Currently, the standard plans limit coverage to age 18 or age 23 if the child continues to be a full-time student and is unmarried. The SEH Board is adopting amendments to the standard plans to change the age of an eligible child to 26, and to remove the requirement for full-time student status and other conditions not applicable to children younger than 19 years old. These changes bring the standard plans into compliance with PPACA. It may be noted, however, that New Jersey recognizes civil union partnerships (and domestic partnerships), and by law must treat civil union partners the same as married spouses for insurance purposes. Accordingly, the children who must be covered until age 26 – including children of an employee's civil union partner – may be somewhat broader in New Jersey than may be required by the Federal law. The Federal law does not preempt more generous State laws in this instance. Thus, the amendment is necessary to assure compliance with both the State and Federal law.

In addition, these adopted amendments exceed MHPAEA in terms of the groups to which the amendments would apply. MHPAEA allows an exemption to compliance by small employers as the term is defined in Federal law at 29 CFR 2590.712(f). Although there are some similarities between the definition used by MHPAEA regulations to the definition of small employer used in New Jersey at N.J.S.A. 17B:27A-17, the definitions are not the same, primarily because of how employees are counted. Thus, some employers that are small employers under the Federal regulations are not small employers under New Jersey's rules and vice versa. A couple of carriers active in the small employer market indicated they would be able to administer the differing benefits based on whether an employer is a New Jersey-defined small employer or a Federally-defined small employer; however, other carriers stated it would be extremely difficult to properly monitor group size and administer benefits accordingly. Additionally, both carriers and brokers noted that groups tend to increase and decrease in size and the resulting change in benefits could be very confusing. The SEH Board voted to make the MHPAEA requirements applicable across the small employer market to avoid the possibility that some small employers plans might be in violation of the Federal requirements.

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