

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

Small Employer Health Benefits Program

Proposed Amendments: N.J.A.C. 11:21-1.2 and 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, Ellen DeRosa, Executive Director

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

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

Proposal number: PRN 2008-

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 Monday March 17, 2008, at 9:30 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, rights 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 small employer health benefit plans into compliance with the intentions of Chapter 103, the Small Employer Health Benefits (SEH) Program Board, the agency charged by the Legislature with implementing and regulating hospital and medical coverage for the small employer market pursuant to P.L. 1992, c. 162 (codified at N.J.S.A. 17B:27A-17 et seq.), as subsequently amended, proposes amending the language of the small employer health benefits plans and related forms to make it clear that civil union partners are to be treated the same as spouses under most circumstances. It must be noted that Chapter 103 does not alter federal law, and thus, certain rights bestowed upon spouses pursuant to Federal law will not inure to civil union partners solely by virtue of Chapter 103. Footnote 25 from Lewis v. Harris, 188 N.J. 415, 459 (2006) – the Supreme Court case which precipitated Chapter 103 – states: “...what we have done and whatever the Legislature may do will not alter federal law, which only confers marriage rights and privileges to opposite-sex married couples.” The New Jersey Supreme Court went on to note that Federal law relies upon the definition of marriage as set forth in the Federal Defense of Marriage Act (at 1 U.S.C.A. 7), as a legal union between one man and one woman. Accordingly, the SEH Program Board is not proposing amendments to provisions of the standard small employer health benefits plan forms that are based solely upon requirements of Federal law (i.e., the COBRA continuation provision).

The Board proposes an amendment to the definition of “dependent” in the standard policy forms and in N.J.A.C. 11:21-1.2 to state that “spouse” includes a civil union partner, as defined in Chapter 103, but noting that spouse does not include a civil union partner for purposes of COBRA. The definition also addresses same sex relationships from other jurisdictions that provide substantially all of the rights and benefits of marriage, as these are also recognized by Chapter 103. The Board is proposing an amendment to the definition of an unmarried dependent child in the standard policy forms to include the child of a civil union partner if the child depends on the employee for most of his or her support and maintenance to provide coverage under the same terms and conditions as the coverage afforded to step-children. The Board is also proposing amendments to sections of the standard policy forms that describe the rights of persons eligible for coverage to address events unique to a civil union, including an amendment to the definition of “late enrollee” in the standard policy forms to include reference to dissolution of a civil union as an exception to the late enrollee classification (which otherwise permits a carrier to apply a preexisting condition limitation period to an eligible covered person). The Board is also proposing to amend the definition of “late enrollee” at N.J.A.C. 11:21-1.2 for the same purpose. The Board is likewise proposing amendments to the New Jersey Group Continuation Rights section and Conversion section of the standard policy forms to clarify that civil union partners have the right to continue coverage upon dissolution of the civil union and convert coverage upon dissolution of the civil union in accordance with State laws, notwithstanding any limitations on the right to continue coverage pursuant to the Federal COBRA. The Board is also proposing amendments to the New Jersey Continuation Rights for Over-Age Dependents provision to note that marriage and civil union partnership are barriers to electing and retaining coverage.

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 using the Compliance and Variability Rider set forth at N.J.A.C. 11:21 Appendix Exhibit DD or may incorporate the change into the standard contracts, certificates, and evidence of coverage. Upon adoption of the proposed amendments, the SEH Board will issue an Advisory Bulletin setting forth the text to be included on the Compliance and Variability rider by those carriers that choose such option.

SEH Rulemaking Procedures

The SEH Board proposes these amendments pursuant to N.J.S.A. 17B:27A-51, which provides 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 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-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-51 may result in the publication of this rule proposal in the New Jersey Register after the comment period has concluded.

Social Impact

The Board is proposing amendments to the standard plans to clarify that civil union partners are eligible to become covered under the standard plans to the same extent as a spouse in compliance with the requirements of Chapter 103. The law became effective February 19, 2007, and while amendment to the standard plans is not technically required to permit civil union partners to become covered, these proposed amendments are intended to avoid any confusion that may arise from failure to specifically reference civil union partners and unique circumstances surrounding their legal relationships. The Board anticipates that these proposed amendments will encourage increased participation of eligible civil union partners in small employer health benefits plans, and that this increased participation will have a positive social impact to the extent that any of these individuals were previously uninsured. Similarly, the Board anticipates that the proposed amendments will discourage inappropriate denials of

coverage of civil union partners that might occur if the standard plans fail specifically to include civil union partners as a class of dependents eligible for coverage when dependent coverage is offered to employees.

Economic Impact

The Board anticipates the proposed amendments will have a modest adverse economic impact upon carriers offering small employer health benefits plans in this State because of costs carriers will incur associated with training appropriate personnel regarding eligibility of civil union partners and developing any administrative forms the carriers believe necessary. These costs, however, are attendant to the implementation of a State mandate and are far outweighed by the benefits to small employers and their employees covered by the standard SEH plans. In addition, the Board expects carriers will incur administrative costs related to replacement of policies or amendment of the policies by a rider to incorporate the language changes the Board is proposing. Of necessity, carriers would be required to use the amended forms for new policy issues and to replace old policies upon renewal or issue a rider to include the amendments.

The Board anticipates that the economic impact upon employees and their civil union partners will be positive because of increased access to group coverage at the dependent spouse rate. In general, it would be less costly to the civil union couple to be covered under a small employer group contract as an employee with an adult dependent than it would be for the couple to purchase a separate individual policy for the non-employee civil union partner.

The Board anticipates that the proposed new rules may result in a modest adverse economic impact upon insurance producers as they educate themselves about the law and the changes in the standard contracts in order to serve their clients.

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 would result in the generation or loss of jobs in the State if adopted.

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 Procedures 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 Small Employer Health Benefits Act (Act), N.J.S.A. 17B:27A-17 et seq., 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 proposal follows:

11:21-1.2 Definitions

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"Dependent" means the spouse or child of an eligible employee subject to applicable terms of the employee's health benefits plan. **The reference to "spouse" includes a civil union partner pursuant to P.L. 2006, c. 103, and same sex relationships recognized in other jurisdictions if such relationships provide substantially all of the rights and benefits of**

marriage, except that spouse shall be limited to spouses of a marriage as marriage is defined in the Federal Defense of Marriage Act, 1 U.S.C.A. 7, with respect to the provisions of the Policy regarding continuation rights required by the Federal Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA), Pub. L. 99-272, as subsequently amended. Thus, for purposes of COBRA, the term “spouse” does not include a civil union partner.

At the option of the small employer, “spouse” includes a domestic partner pursuant to P.L. 2003, c. 246.

...

"Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefits plan of a small employer following the initial minimum 30-day enrollment period provided under the terms of the health benefits plan. An eligible employee or dependent shall not be considered a late enrollee if the individual: was covered under another employer's health benefits plan at the time he was eligible to enroll and stated at the time of the initial enrollment that coverage under that other employer's health benefits plan was the reason for declining enrollment, but only if the plan sponsor or carrier required such statement at that time and provided the employee with notice of that requirement and the consequences of that requirement at that time; has lost coverage under that other employer's health benefits plan as a result of termination of employment or eligibility, reduction in the number of hours of employment, involuntary termination, the termination of the other plan's coverage, death of a spouse, or divorce or legal separation **or dissolution of a civil union** or termination of a domestic partnership; and requests enrollment within 90 days after termination of coverage provided under another employer's health benefits plan. An eligible employee or dependent also shall not be considered a late enrollee if the individual is employed by an employer which offers multiple

health benefits plans and the individual elects a different plan during an open enrollment period; the individual had coverage under a COBRA continuation provision and the coverage under that provision was exhausted and the employee requests enrollment not later than 30 days after the date of exhaustion of COBRA coverage; or if a court of competent jurisdiction has ordered coverage to be provided for a spouse or minor child under a covered employee's health benefits plan and request for enrollment is made within 30 days after issuance of that court order or initially waived coverage under the policy for himself or herself and any then existing dependents provided the employee enrolls to cover himself or herself and his or her existing dependent spouse, if any, under the policy within 30 days of the marriage, birth, adoption or placement for adoption of a newly acquired dependent.

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Date

Ellen DeRosa, Executive Director