

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE

SMALL EMPLOYER HEALTH BENEFITS PROGRAM

Changes to the Standard Plans to Comply with Federal Law

Proposed Amendments: Exhibits A, F, G and HH of the Appendix to N.J.A.C. 11:21

Authorized By: New Jersey Small Employer Health Benefits Program, Ellen DeRosa, Executive Director

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

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

Proposal Number: PRN 2012-

As required by N.J.S.A. 17B:27A-51, interested parties may testify with respect to the standard health benefits plans, set forth in Exhibits A, F, G and HH of the Appendix to N.J.A.C. 11:21 at a public hearing to be held on Tuesday at January 8, 2013 at 9:30 a.m. in the 11th floor Conference Room, 20 West State Street, Trenton, New Jersey.

Submit written comments by January 11, 2013 to:

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

SUMMARY

The Small Employer Health Benefits (SEH) Program was established by P.L. 1992, c. 162. The SEH Program is administered through a Board of Directors (Board). One of the primary functions of the SEH Program and its Board is the creation of standard health benefits

plans (standard plans) to be offered in the small employer market in New Jersey. There are five standard plans, which have been established through regulation, and are set forth in Exhibits A, F, G, V, W, Y, HH and II of the Appendix to N.J.A.C. 11:21 along with Exhibit K, which provides explanations of how variables in the standard plans may be used by carriers.

Since the SEH Board's last modifications to the SEH standard plans an additional Federal requirement became operative.

The Federal Patient Protection and Affordable Care Act, Public Law 111-148, as amended and supplemented by the Health Care and Reconciliation Act, Public Law 111-152 (herein, PPACA) requires the development and distribution of a document entitled Summary of Benefits and Coverage or SBC. Carriers selling plans in the SEH market author the text of the SBC using the templates and guidance from the following Federal Departments: Department of Treasury, Department of Labor and Department of Health and Human Services (Departments).

Carriers selling group coverage recognize the employer as essential in facilitating distribution to employees and developed agreements in which they state the role of the employer. The February 14, 2012 Final Rule (77 F.R. 8668) regarding the Summary of Benefits and Uniform Glossary provides support for such an approach. Footnote 10 of the Final Rule states:

10 With respect to insured group health plan coverage, PHS Act section 2715 generally places the obligation to provide an SBC on both a plan and issuer. As discussed below, under section III.A.2.d., "Special Rules to Prevent Unnecessary Duplication With Respect to Group Health Coverage", if either the issuer or the plan provides the SBC, both will have satisfied their obligations. As they do with other notices required of both plans and issuers under Part 7 of ERISA, Title XXVII of the PHS Act, and Chapter 100

of the Code, the **Departments expect plans and issuers to make contractual arrangements for sending SBCs.** Accordingly, the remainder of this preamble generally refers to requirements for plans or issuers. (Emphasis added)

The second paragraph of Response 5 in the “FAQs about Affordable Care Act Implementation (Part VIII)” dated March 19, 2012 also provides support for Carriers expecting employers to cooperate with the distribution of the SBC.

The Departments have determined that, until further guidance is issued, **where a group health plan or group health insurance issuer has entered into a binding contractual arrangement under which another party has assumed responsibility** (1) to complete the SBC, (2) to provide required information to complete a portion of the SBC, or (3) **to deliver an SBC with respect to certain individuals in accordance with the final regulations**, the plan or issuer generally will not be subject to any enforcement action by the Departments for failing to provide a timely or complete SBC, provided the following conditions are satisfied:

- The plan or issuer monitors performance under the contract,
- If a plan or issuer has knowledge of a violation of the final regulations and the plan or issuer has the information to correct it, it is corrected as soon as practicable, and
- If a plan or issuer has knowledge of a violation of the final regulations and the plan or issuer does not have the information to correct it, the plan or issuer communicates with participants and beneficiaries regarding the lapse and begins taking significant steps as soon as practicable to avoid future violations.(Emphasis added)

The primary contractual arrangement Carriers have with the employer is the Group Policy/Group Contract. Carriers requested the opportunity to add text to the Group Policy/Group Contract to address the role the employer plays in the distribution of the SBC. To accommodate those requests the SEH Board developed a provision entitled “Responsibilities of the Policyholder.” In HMO and HMO-POS contracts the provision is entitled “Responsibilities of the Contractholder.”

The SEH Board proposes amending the General Provisions section of the group policy/contract forms for Plan A, Plans B – E, HMO and HMO-POS to include variable text that describes the policyholder/contractholder’s responsibilities with respect to the distribution of the SBC. The provision is variable such that it may be included by those carriers that wish to include the contractual arrangement in the policy and contract forms. Carriers that establish the contractual arrangement by other means may decide they do not wish to include the new provision.

The SEH Board does not intend to require carriers to re-issue policies and contracts in order to include the provision. The SEH Board believes the provision may be included using the Compliance and Variability Rider found at Appendix Exhibit DD to N.J.A.C. 11:21.

SEH Rulemaking Procedures

The SEH Board is proposing these amendments in accordance with the special action process established at N.J.S.A. 17B:27A-51, as an alternative to the common rulemaking process specified at N.J.S.A. 52:14B-1 et seq. Pursuant to N.J.S.A. 17B:27A-51, the SEH Board may expedite adoption of certain actions, including modification of the SEH Program’s health benefits plans and policy forms, if the SEH Board provides interested parties a minimum 20-day

period during which to comment on the Board's intended action following notice of the intended action in three newspapers of general circulation, with instructions on how to obtain a detailed description of the intended action and the time, place and manner by which interested parties may present their views regarding the intended action. Concurrently, the SEH Board must forward notice of the intended action to the Office of Administrative Law (OAL) for publication in the *New Jersey Register*, although the comment period runs from the date the notice is submitted to the newspapers and OAL, not from the date of publication of the notice in the *New Jersey Register*. The SEH Board also sends notice of the intended action to affected trade and professional associations, carriers, and other interested persons who may request such notice. In addition, for intended modifications to the health benefits plans, the SEH Board must allow for testimony to be presented at a public hearing prior to adopting any such modifications. Subsequently, the SEH Board may adopt its intended action immediately upon the close of the specified comment period or close of a public hearing (whichever is later) by submitting the adopted action to the OAL for publication. The adopted action is effective upon the date of its submission to the OAL, or such later date as the Board may designate. If the Board does not respond to commenters as part of the notice of adoption, the Board will respond to the comments timely submitted within a reasonable period of time thereafter in a separately-prepared report which will be submitted to OAL for publication in the *New Jersey Register*.

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 SEH Board believes the proposed amendment will have positive social impact. The proposed amendment will allow carriers the opportunity to address policyholder responsibilities in the document in which policyholders expect responsibilities to be addressed, namely the group policy. Although policyholders will have received materials explaining the SBC detailing the circumstances and timing for distribution of the SBC, the inclusion of the provision in the policy form will reinforce the necessity of distributing the SBC.

Economic Impact

The IHC Board anticipates a negligible economic impact as a result of the proposed amendments. Carriers will incur some costs with respect to printing and mailing. Any costs incurred by the employer would arise from the Federal requirement to distribute the SBC and not from the inclusion of the provision in the policy.

Carriers are unlikely to require any new or additional professional or technical services to accommodate these proposed amendments beyond those already at their disposal.

Federal Standards Analysis

The proposed amendments comply with 29 CFR 2590.715-2715. The rules do not expand upon the requirements set forth in the Federal law. There are no other Federal laws that apply to these amendments.

Jobs Impact

The SEH Board does not anticipate that any jobs will be generated or lost as a result of the proposed amendments.

Agricultural Industry Impact

The SEH Board does not believe the proposed amendments will have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The SEH Board does not believe the proposed amendments apply to “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but acknowledges the possibility that a carrier might meet that definition. The proposed amendments do not establish new or additional reporting or recordkeeping requirements, but have the effect of establishing new compliance requirements, as described in the Summary above. The economic impact on a carrier that may be a small business is described in the Economic Impact set forth above. No differentiation in compliance requirements is provided based on business size. No additional professional services would have to be employed in order to comply with this proposed rule.

Housing Affordability Impact

The SEH Board does not believe the proposed amendments will have an impact on housing affordability in this State. The proposed amendments relate to the benefit levels and terms of standard health benefits plans offered in New Jersey.

Smart Growth Development Impact

The SEH Board does not believe the proposed amendments will have an impact on the number of housing units or the availability of affordable housing in the State, or that the proposal will have an affect on smart growth development in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments relate to the benefit levels and terms of standard health benefits plans offered in New Jersey.

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