



State of New Jersey
DEPARTMENT OF BANKING AND INSURANCE
PO Box 325
TRENTON, NJ 08625-0325
Tel (609) 292-5360

JAMES E. MCGREEVEY
Governor

HOLLY C. BAKKE
Commissioner

BULLETIN NO. 04-17

TO: ALL INSURANCE COMPANIES, HEALTH SERVICE CORPORATIONS, HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, AND HEALTH MAINTENANCE ORGANIZATIONS AUTHORIZED TO ISSUE HEALTH BENEFIT PLANS IN NEW JERSEY

FROM: HOLLY C. BAKKE, COMMISSIONER

RE: HEALTH SAVINGS ACCOUNTS AND HIGH DEDUCTIBLE HEALTH PLANS

The Federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. No. 108-175) (the "Act") added section 223 to the Internal Revenue Code to permit eligible individuals to establish Health Savings Accounts (HSAs) beginning January 1, 2004. HSAs are trusts or custodial accounts that receive tax favored contributions that may be accumulated over the years, or distributed on a tax-free basis, to pay or reimburse qualifying medical expenses. To be eligible to establish a HSA, an individual must be enrolled in a "high deductible health plan" (HDHP), must not be covered by another HDHP (with certain exceptions for plans providing limited coverage), must not be entitled to Medicare benefits, and may not be claimed as a dependent on another person's tax return.

The Act defines a HDHP as a health insurance plan that has an annual deductible of at least \$1,000 and an annual out-of-pocket limit of not more than \$5,000 for individual coverage. For family coverage, a HDHP must have an annual deductible of at least \$2,000 and an annual out-of-pocket limit of not more than \$10,000. Such amounts are subject to cost-of-living adjustments. A HDHP may exempt preventive care from the deductible, but may not provide benefits in any year for any non-preventive care until the deductible for that year is satisfied.

Current New Jersey law would preclude certain health benefit plans from providing HDHP coverage, and would need to be amended to comply with the Act. The purpose of this Bulletin is to advise carriers of the status of New Jersey law as it relates to

various benefits and types of coverage, and what is required for compliance in the interim.

- **Application of Deductible**

New Jersey law (P.L. 1995, c. 316) requires that treatment of lead poisoned children be covered without application of a deductible. Under the Act, a HDHP may only exempt preventive care from application of a deductible. The Department of Treasury Notice 2004-43, published by the Internal Revenue Service on July 6, 2004, however, provides that HDHPs that exempt non-preventive care from a deductible because of state-mandated benefit laws will still be treated as qualifying under section 223(c)(2) of the Act and that eligible individuals covered under such plans may contribute to a HSA through December 31, 2005. States are therefore provided with a two-year transition period lasting until December 31, 2005 to modify their mandated benefits laws so that a deductible applies to all non-preventive care. Accordingly, New Jersey's mandate that the treatment of lead poisoned children be covered without application of a deductible is not a bar to the establishment of HSAs, but must be modified by January 1, 2006 if HSAs are to continue to be made available after that date.

- **Large Group Coverage**

Currently, there are no statutory or regulatory barriers preventing carriers from offering large group coverage that qualifies as HDHP coverage. Carriers that elect to offer a HDHP with a network-based plan must comply with N.J.A.C. 11:22-5 et seq. Please note that the requirements of N.J.A.C. 11:22-5 are not inconsistent with those in section 223.

- **Small Employer Health Coverage**

In order to issue a HDHP in the small employer health coverage (SEH) market, carriers must submit a decreasing benefit rider to the Department for approval pursuant to N.J.S.A. 17B:27A-19i(1) that changes the manner in which the family deductible is accumulated. If the HDHP is a network-based plan, it must also comply with N.J.A.C. 11:22-5 et seq.

- **Individual Health Coverage**

Currently, none of the standard plans in the individual health coverage (IHC) market qualify as a HDHP, and the IHC law does not permit the use of optional benefit riders. In light of Treasury Notice 2004-43 providing transitional relief as described above, the IHC Board is considering proposing amendments to the standard plans that will permit them to qualify as HDHPs. Any formal rule proposal, and subsequent adoption, amending the plans will be posted on the Department's web page.

Any questions concerning this Bulletin should be directed to:

Gale Simon, Assistant Commissioner
Office of Life and Health
NJ Department of Banking and Insurance
20 West State Street
PO Box 325
Trenton, NJ 08625-0325
FAX: 609-633-0527
Email: gsimon@dobi.state.nj.us

8/27/04
Date

/s/ Holly C. Bakke
Holly C. Bakke, Commissioner

inoord/bbhsa