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BULLETIN NO. 18-09

TO: ALL HEALTH CARRIERS THAT ISSUE INDIVIDUAL AND SMALL EMPLOYER HEALTH BENEFIT PLANS IN NEW JERSEY

FROM: MARLENE CARIDE, ACTING COMMISSIONER

RE: AMENDMENT TO MINIMUM STANDARDS FOR HEALTH BENEFIT PLANS TO FACILITATE PLAN DESIGNS CONSISTENT WITH FEDERAL REQUIREMENTS

The 2010 Federal Patient Protection and Affordable Care Act (ACA, P.L. 111-148, as amended) and the Federal rules promulgated thereunder require that health benefit plans issued in the individual and small employer markets satisfy specific actuarial value (AV) standards. The Federal Government makes annual adjustments to actuarial value calculator. These AV calculator adjustments cause plans that satisfied the requirements of certain actuarial metal tiers (e.g. bronze, silver, and gold) in one policy year to no longer qualify in the following policy year without changes (also known as uniform modifications) to the plan design that impact policyholders' cost sharing or require withdrawal and issuance of a new plan with similar significant impacts. This year greater consumer cost-sharing is required to have many plans qualify under the AV calculator. This is driven by the AV calculator changes and the final 2019 Notice of Benefits and Payment Parameters (NBPP) issued by CMS on April 17, 2018 (see <https://www.federalregister.gov/d/2018-07355>), which increased one component of cost sharing, the maximum out-of-pocket (MOOP) under the ACA, to \$7,900 per individual. For the first time, the ACA MOOP exceeds New Jersey's MOOP for individuals of \$7,500 that is in our rules on Minimum Standards for Health Benefit Plans (Minimum Standards) at N.J.A.C. 11:22-5.3 and 5.4.

The Department has determined that the federal changes to the AV calculator, and the associated increase in the ACA MOOP, has impacted the ability of carriers to have their plans fit within the metal tiers without significant plan design changes, that will likely require increases in up-front cost-sharing for policyholders - such as increased copayments and increased deductibles, or an increase to the MOOP that functions as a cap on cost-sharing. We encountered a somewhat similar circumstance that only affected bronze plans in 2015. At that time, we adjusted the individual network deductible to \$3,000 for bronze plans only in Bulletin 15-04, which noted that amendments to the Minimum Standards rules in N.J.A.C. 11:22-5 would be considered.

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In light of the current circumstances and annual Federal action to amend the AV calculator and the increase in the ACA MOOP, the Department has determined that it is necessary to take action via this bulletin and future rulemaking to ensure the continued availability of reasonable and meaningful health benefits plans for consumers. Specifically, effective with plan years beginning on or after January 1, 2019, the Department will permit health carriers to use an individual network MOOP that is no greater than the maximum annual limitation on cost sharing provided under Federal law pursuant to 45 C.F.R. § 156.130 and defined annually in the final NBPP rule unless the Commissioner takes action via Order within 45 days of issuance of the final NBPP to freeze the MOOP at the prior policy year maximum. Permitting New Jersey's MOOP to align with the ACA MOOP going forward, unless otherwise ordered by the Commissioner, will help limit increases to up-front policyholder cost-sharing – namely increases to deductibles and co-payments – that often discourage policyholders from seeking needed medical treatment. Additionally, many policyholders do not come close to reaching the MOOP, and thus this approach limits adverse impacts on most policyholders. This approach also enables our health carriers to make rational adjustments to satisfy future AV calculator adjustments, but expressly retains the Commissioner's power to limit future increases to the MOOP as circumstances change.

The Department issues this Bulletin pending our proposal of amendments to N.J.A.C. 11:22-5 to make this adjustment, the adjustment provided for in Bulletin 15-04, and any other appropriate adjustments to the Minimum Standards. The Department anticipates issuing a rule proposal in the near future.

Any questions regarding this bulletin may be directed to Ellen DeRosa, Executive Director of the Individual and Small Employer Health Benefits Programs at Ellen.DeRosa@dobi.nj.gov.

5/30/18
Date



Marlene Caride
Acting Commissioner