



State of New Jersey

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BULLETIN NO. 20-12

TO: ALL HEALTH CARRIERS, DENTAL SERVICE CORPORATIONS, AND DENTAL PLAN ORGANIZATIONS ISSUING STANDARD SMALL EMPLOYER HEALTH AND DENTAL BENEFITS PLANS IN THIS STATE AND ALL LICENSED BROKERS SELLING STANDARD SMALL EMPLOYER HEALTH AND DENTAL BENEFITS PLANS IN THIS STATE

FROM: MARLENE CARIDE, COMMISSIONER

RE: GUIDANCE CONCERNING CIRCUMSTANCES RELATED TO THE COVID-19 PANDEMIC (SMALL EMPLOYER MARKET)

On March 9, 2020, Governor Phil Murphy declared a state of emergency and public health emergency through the issuance of Executive Order No. 103 to contain the spread of the Coronavirus ("COVID-19") pandemic and, on April 7, 2020, issued Executive Order No. 119 ("EO 103" and "EO 119") declaring that the Public Health Emergency declared in Executive Order No. 103 continues to exist. The Governor subsequently issued Executive Order 104 on March 16, 2020 which required some businesses to close, followed by Executive Order 107 on March 21, 2020 which required all non-essential employees to stay home.

Thus, many small businesses have closed and/or substantially reduced the hours and services they offer. For a variety of reasons associated with the pandemic, many employees currently covered under small employer health and dental benefits plans are being laid off, furloughed and are thus not actively at work, or given reduced work hours. The health coverage of employees no longer working is in jeopardy. The renewal of group policies of employers whose plans are under review prior to renewal may be threatened.

On April 9, 2020, Governor Murphy also issued Executive Order No. 123 ("EO 123"). EO 123 directed carriers to refrain from cancelling any policy or contract for nonpayment for a period of time, to exercise appropriate forbearances on collection documentation, to amortize any unpaid payments, and to refrain from seeking recoupment of any unpaid claims paid during the emergency grace period. The Department of Banking and Insurance ("Department") is issuing this Bulletin to provide required guidance to all health carriers, dental service corporations, and dental plan organizations (carriers) issuing small employer health and dental benefits plans in this State as well as brokers selling such plans regarding circumstances related to the COVID-19 pandemic. The following guidance is effective immediately and continues for the duration of the state of

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emergency and public health emergency declared pursuant to EO 103 and EO 119. The Department will continue to review this guidance during the duration of EO 119 to ensure consumers receive the intended relief.

Small Employer: Refers to an employer who employed an average of at least 1 but not more than 50 employees on business days *during the preceding calendar year* and who employs at least 1 employee on the first day of the plan year.

Guidance Related to the COVID-19 Pandemic

2020 Renewals

Carriers must deem all small employers that have group plans with anniversary dates occurring during the month of March through the end of the state of emergency period as eligible for renewal.

Carriers must rescind the termination notices that may already have been sent to small employers for small employer health benefits plans with anniversary dates occurring during the month of March and through the end of the state of emergency period. Those small employers shall be deemed eligible.

If a group wishes to terminate its small employer health benefits plan(s), the small employer must submit a written termination letter to the carrier prior to the renewal date.

Carriers must delay renewal reviews as may be necessary during the state of emergency.

2021 Renewal Review

The employees of an inforce group are reviewed annually prior to renewal with the renewal review starting about 150 days prior to renewal. That review looks at the number of employees on business days in the preceding calendar year. For many businesses in New Jersey, the period of time encompassed within the state of emergency did not constitute normal business days. Therefore, when groups are renewing in 2021 and the business days in 2020 are reviewed, the State of Emergency period must be excluded from review.

Waiting Period

A small employer that lays off one or more employees may seek to re-hire those employees once business resumes operations. Carriers must waive any applicable waiting period that would apply to employees who were laid off after March 1, 2020 and again become full time employees eligible for health insurance under the small employer's policy.

Actively at Work or Active Work Requirement

Since the Health Insurance Portability and Accountability Act (HIPAA), the active work requirement has not applied when absence from work is due to health status-related factors. "Health status" is one such factor. When a temporary lay-off or furlough is the result of a government declaration of a public health emergency requiring small employer businesses to close or substantially reduce hours, and non-essential employees are directed to stay home generally to mitigate the spread of a virus and the consequent health effects of it, then it is reasonable to

determine failure to be actively at work under these circumstances is due to health status and is thus a health status related factor under HIPAA.

Carriers may consider the public health emergency as health status. Thus, employees who are furloughed or temporarily laid off during this public health emergency are not required to be found ineligible due to not being actively at work. Employers who continue to cover furloughed or temporarily laid-off employees must remit the required premium for such coverage to the carrier.

Full -Time Requirement

Carriers must relax the full-time requirement to allow continued employee coverage for employees whose hours have been reduced. The reduced hour requirements would apply only to employees who are currently covered and whose hours have been reduced. By relaxing the full-time requirements, the employee may remain covered under the group policy without having to elect COBRA.

Extended Grace Period

Carriers shall make available an emergency 60-day grace period to any small employer that requests it.

The grace period may be initially applied towards the April or May premium as the policyholder determines and will continue for 60 calendar days from that date. During this emergency grace period, a carrier shall not terminate that policy for nonpayment of premium. Coverage must remain in force and claims must be paid and may not be pended.

If a carrier has already provided a policyholder with a legally required grace period for April 2020 premiums, the time period for which a grace period has already been granted shall be applied toward the emergency grace period. This 60-day grace period shall only apply to policyholders that were in good standing with their insurance carrier on March 1, 2020 and shall only apply to premiums due after the initial premium has been made to secure coverage.

After the 60-day emergency grace period, a policyholder must be offered the option of amortizing any unpaid premium over the remaining months of the policy, but for not less than six months. For example, if six months are remaining on the policy, the policyholder must be given the option to pay the unpaid premium in six installments in addition to the regular monthly premium. If less than three months remain on the policy, the carrier must allow at least six months for the deferred premium to be paid.

Carriers are directed that they are not to seek recoupment from any policyholder for any claims incurred during this emergency grace period. Carriers shall not report late payments to credit reporting agencies, consistent with this guidance, for policyholders taking advantage of COVID-19-related relief.

Carriers are further directed to, in addition to posting information on the carrier's website, provide each small employer policyholder with an easily readable written description of the terms of the extended grace period offered pursuant to this guidance. Carriers must also report to the Department the manner in which they will comply with this bulletin concurrent with those changes

taking effect. All carrier changes must be uniformly applied to all small employer health benefits plans to which the changes would be applicable. Carriers are directed to file this information with the Department's Office of Life and Health at lifehealth@dohi.nj.gov.



April 10, 2020
Date

Marlene Caride
Commissioner

Small Employer Bulletin/COVID-19

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE
NOTICE OF RULE MODIFICATION
PURSUANT TO EXECUTIVE ORDER NO. 103 (MURPHY)(MARCH 9, 2020) AND
EXECUTIVE ORDER NO. 123 (MURPHY)(APRIL 9, 2020)
COVID-19 STATE OF EMERGENCY

Temporary Rule Modification adopted by Marlene Caride, Commissioner, Department of Banking and Insurance

Date: April 10, 2020

Authority: N.J.S.A. App.A:9-45 & App. A:9-47; Exec. Order No. 103 (March 9, 2020) ___ N.J.R. ___ (“EO 103”); Exec. Order No. 123 (April 9, 2020) ___ N.J.R. ___ (“EO 123”)

Effective Date: April 10, 2020

Expiration Date: Concurrent with end of EO 103

This is an emergency adoption of a temporary rule modification of the Department’s Insurance rules at N.J.A.C. 11:21-7.11, N.J.A.C. 11:21-7.5, N.J.A.C. 11:21-7.6, N.J.A.C. 11:21-6.2, and N.J.A.C. 11:21-1.2. Section 6 of EO 103, issued in response to the COVID-19 pandemic, authorizes agency heads to waive/suspend/modify any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Further, Section 5 of EO 123 authorizes the Commissioner of the Department of Banking and Insurance to take all appropriate steps to effectuate EO 123. Pursuant to that authority, and with the approval of the Governor and in consultation with the State Director of Emergency Management and the Commissioner of the Department of Health, the Department of Banking and Insurance (“Department”) is modifying certain rules as follows:

In order to provide relief to insureds with health coverage under small employer health benefits plans designed by the Small Employer Health Benefits (“SEH”) Program, so that their policies are not cancelled for nonpayment of premium, the Department is taking the following action:

N.J.A.C. 11:21-7.11 states a carrier may discontinue a health benefits plan if the policyholder does not meet the minimum participation and contribution requirements. These requirements are modified as it relates 2020 renewals, as all carriers must keep small employers that have group plans with anniversary dates occurring during the month of March until the end of the state emergency period, as eligible for renewal. Further, carriers must rescind termination notices that may already have been sent to small employers for small employer health benefits plans with anniversary dates occurring during the month of March and through the end of the state of emergency period. Those small employers shall be deemed eligible. If a group wishes to terminate its small employer health benefits plan(s), the small employer must submit a written termination letter to the carrier prior to the renewal date. Carriers must delay renewal reviews as may be necessary during the state of emergency.

Further, N.J.A.C. 11:21-7.5 requires a minimum participation of 75 percent of full-time employees under a small employer's health benefits plan for purposes of eligibility of coverage and N.J.A.C. 11:21-7.6 requires a small employer carrier shall not require a minimum small employer contribution of more than 10 percent of the annual cost of the small employer's health benefits plan. As carriers must keep all small employers with anniversary dates occurring during the month of March until the end of the state emergency period as eligible, these requirements are being relaxed.

In addition, employees of an inforce group are reviewed annually pursuant to N.J.A.C. 11:21-6.2. The review looks at the number of employees on business days in the preceding calendar year. For many businesses in New Jersey, the period of time encompassed within the state of emergency did not constitute normal business days. Therefore, when groups are renewing in 2021 and the business days in 2020 are reviewed, the state of emergency period must be excluded from review.

N.J.A.C. 11:21-1.2 defines "full time employee" as an employee who works 25 hours per week. This requirement is modified as it relates to employees who are currently covered under SEH plan whose hours have been reduced so that these employees may remain covered under the group policy without having to elect continuation of benefits.

I find that modification of the rules above is necessary because enforcement of the existing rules would be detrimental to the public welfare during this emergency.



April 10, 2020

Date

Marlene Caride
Commissioner

AR Small Employer Notice of Modification/COVID