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ADVISORY BULLETIN
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To: SEH Program Member Carriers that Issue Coverage
SEH Program Interested Parties

From: Ellen DeRosa
Executive Director

Re: Requirements to offer coverage to a small employer

As part of its ongoing responsibility for oversight of the small employer health coverage program, the Small Employer Health Benefits Program Board (SEH Board) considers questions and comments presented by employers, producers and carriers. The SEH Board recently considered whether carriers offering coverage in the small employer market are required, under the terms of the small employer law (N.J.S.A. 17B:27A-17 et seq), to issue a small employer health benefits plan to an employer who either already has a health benefits plan for the employees or who is concurrently securing a health benefits plan for the employees. Although SEH Board discussed this question several times in the past the SEH Board believed the question should again be considered.

The Law

N.J.S.A. 17B:27A-18 provides that “[c]arriers shall offer coverage to all eligible employees of small employers and their dependents.” As the requirement is more commonly expressed, coverage is guaranteed issue.

N.J.S.A. 17B:2A-24 specifies the standards for a carrier’s acceptance of a small employer group. This section of the law addresses a 75% participation requirement as well as provides for participation credit for coverage under a spouse’s health benefits coverage, Medicare, Medicaid NJ FamilyCare or another group health benefits plan.

What Does the Law Mean?

The SEH Board believes the language of the law supports more than one interpretation. The law could be read as requiring carriers to allow small employers to purchase more than one policy so long as the 75% participation requirement is satisfied. The law could also be read as allowing carriers to limit the number of policies a carrier issues to small employers.

For a number of years the SEH Board has favored the interpretation that requires carriers to allow small employers to purchase more than one policy, where the multiple policies may be from one or multiple carriers, provided the 75% participation requirement is satisfied when considering all of the policies.

When the SEH Board recently considered the two possible interpretations of the law the SEH Board determined that a better reading of the law from a public policy perspective would be to favor the interpretation that allows carriers to limit the number of policies a carrier issues to a small employer.

By majority vote the SEH Board passed the following motion:
A primary carrier (which is a carrier that issues to a small employer group satisfying the 75% participation requirement) is required to issue at least one health benefits plan to an eligible small employer group. A second carrier may choose whether or not to issue an additional plan or plans to that eligible small employer.

The Impact on Small Employers

For policies issued on or after September 1, 2010 a primary carrier must issue at least one health benefits policy to an eligible small employer group. Whether the carrier as the primary carrier issues more than one policy depends on the underwriting guidelines each carrier has established which define the circumstances under which the carrier will issue only one policy and the circumstances under which the carrier will issue more than one policy. Since a second carrier may choose whether or not to issue a policy to a small employer the SEH Board asked carriers to identify circumstances under which the carrier, as second carrier will issue a policy to a small employer where another carrier has 75% or more of the group.

The SEH Board has asked carriers to provide their primary carrier and second carrier underwriting guidelines. As carriers provide such guidelines and any revisions to such guidelines to the SEH Board they will be posted on the SEH Board's website under the shopping for insurance section. http://www.state.nj.us/dobi/division_insurance/ihcseh/shop_seh.htm

Impact on Inforce Policies

Small employer policies are guaranteed renewable except as provided at N.J.S.A. 17B:27A-23. If a small employer currently offers multiple policies from one or multiple carriers such multiple policies may be renewed provided there are *no* changes made to the policies on renewal. If the employer wishes to amend one or more of the policies the issuance of such new policies will be subject to the carrier's underwriting rules as discussed above. It is possible a requested plan change will be consistent with the carrier's underwriting guidelines and the new plan will be issued. It is also possible a requested change will result in the carrier's underwriting guidelines not being satisfied meaning the carrier will not write the new policy.

Example. An employer who employs 12 employees has an HMO covering 4 employees and a POS covering 6 employees with one carrier and a PPO covering 1 employee with another carrier. 1 employee waived due to spousal coverage. The renewal date is December 1, 2010.

Scenario 1: The employer makes no changes to any of the policies. The 3 policies are renewed.

Scenario 2: The employer requests to amend the POS policy. The carrier issuing the POS plan reviews the request against the carrier's established primary carrier underwriting guidelines. If such guidelines allow the POS and HMO plans from the same carrier the amendment will be made and the employer retains 3 policies. Otherwise the POS plan is non-renewed and the employer retains 2 policies. Alternatively the employer may elect to retain the un-amended POS plan with the HMO and PPO plans.

Scenario 3: The employer requests to amend the PPO policy. The carrier issuing the PPO plan reviews the request against the carrier's established second carrier underwriting guidelines. If such guidelines allow the carrier to issue the coverage as the second carrier the amendment will be made and the employer retains 3 policies. Otherwise the PPO plan is non-renewed and the employer retains the 2 policies from the primary carrier.