



## State of New Jersey

DEPARTMENT OF BANKING AND INSURANCE  
SMALL EMPLOYER HEALTH BENEFITS PROGRAM

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### ADVISORY BULLETIN 12-SEH-01

February 1, 2012

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

From: Ellen DeRosa  
Executive Director

**Re: Adopted Amendments to the Standard Plans to Comply with Federal Law**

The Small Employer Health Benefits Program Board (SEH Board) proposed and adopted amendments to the standard health benefits plans to comply with 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 (PPACA) in the fall of 2010. Subsequently, SEH Board received information and guidance concerning the rescission provisions of PPACA that necessitated further amendments to the standard health benefits plans.

The SEH Board proposed amendments to comply with rescission requirements of PPACA and to propose a technical amendment to the COBRA provision on November 16, 2011. The comment period for the proposal expired on December 22, 2011. During the SEH Board meeting on January 18, 2012 the SEH Board adopted the amendments that were proposed to the standard health benefits plans.

***2012 Forms***

The text of the new forms is posted under the Latest News section on our website, [http://www.state.nj.us/dobi/division\\_insurance/ihcseh/sehmain.htm](http://www.state.nj.us/dobi/division_insurance/ihcseh/sehmain.htm).

In addition, information on proposals and adoptions can be found on our website at the following address:

[http://www.state.nj.us/dobi/division\\_insurance/ihcseh/sehrulesadoptions.htm](http://www.state.nj.us/dobi/division_insurance/ihcseh/sehrulesadoptions.htm)

***Use of Compliance and Variability Rider***

Given the nature and extent of the amendments to the standard plans and the fact that

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Carriers re-issued all inforce plans to comply with the 2010 adoption, the SEH Board determined that Carriers may use either the Compliance and Variability Rider to accomplish the current amendments or may issue the standard health benefits plans with the amended text included in the forms. Please note that the Compliance and Variability Rider may be used to amend inforce policies as well as to amend newly issued policies.

The SEH Board established a July 1, 2012 Operative Date for the adopted amendments. For inforce policies Carriers must issue the Compliance and Variability Rider no later than July 1, 2012. For new policies Carriers must begin issuing the Compliance and Variability Rider with the policies or must issue policies using the 2012 forms that include the amended provisions no later than July 1, 2012.

***Compliance and Variability Rider***

The text to be included on the Compliance and Variability Rider is included at the end of this Advisory Bulletin.

When attached to a policy or contract sections A – E must be included. When attached to a certificate or evidence of coverage sections A and C should be omitted and the remaining sections lettered as A – C.

As appropriate,. the terms Policyholder and Policy may be replaced with Contractholder and Contract and the term Covered Person may be replaced with the term Member

***Compliance with Law***

The SEH Board recognizes that the policy form language supporting provisions required by Federal law will be provided to the groups after the law was effective. Since all of the standard SEH plans contain a Conformity with Law provision, Carriers must administer the plans consistent with the requirements of the law whether or not the policy form language is consistent with the law.

***Questions?***

If you have any questions please send them by email to [ellen.derosa@dobi.state.nj.us](mailto:ellen.derosa@dobi.state.nj.us).

## TEXT TO INCLUDE ON THE COMPLIANCE AND VARIABILITY RIDER

A. The **Premium Amounts** provision in the **General Provisions** of the [Policy] is deleted in its entirety and replaced with the following **Premium Amounts** provision.

### **PREMIUM AMOUNTS**

The premium due on each premium due date is the sum of the premium charges for the coverage then provided. Those charges are determined from the premium rates then in effect and the Employees [and Dependents] then covered.

### **Premium Refunds**

If one or more of the premiums paid include charges for an Employee [and or Dependent] whose coverage has ended before the due date of that premium, any refund of premium will depend on whether the Employee contributed toward the premium payment or whether it was paid in full by the [Policyholder].

If the Employee contributed toward the premium payment, [Carrier] will not refund the premium and coverage will continue in force through the end of the period for which premium has been contributed by the Employee.

If the premium was paid in full by the [Policyholder], any refund of premium will depend on whether claims were incurred during the period of no more than two months for which refund is requested. If no claims have been incurred [Carrier] will refund premiums paid for a maximum of two months prior to the date [Carrier] receives written notice from the [Policyholder] that the Employee's [and or Dependent's] coverage has ended. If claims have been incurred during the period prior to [Carrier's] receipt of written notice that the Employee [and Dependent's] coverage has ended, [Carrier] shall not be required to refund premium to the [Policyholder].

B. The **Clerical Error Misstatements** provision in the **General Provisions** is deleted in its entirety and replaced with the following:

### **CLERICAL ERROR - MISSTATEMENTS**

Except as stated below, neither clerical error nor programming or systems error by the [Policyholder], nor [Carrier] in keeping any records pertaining to coverage under this [Policy], nor delays in making entries thereon, will invalidate coverage which would otherwise be in force, or continue coverage which would otherwise be validly terminated. Upon discovery of such error or delay, an appropriate adjustment of premiums will be made, as permitted by law.

Exception: If an Employee contributed toward the premium payment and coverage continued in force beyond the date it should have been validly terminated as a result of such error or delay, the continued coverage will remain in effect through the end of the period for which the Employee contributed toward the premium payment and no premium adjustment will be made.

Premium adjustments involving return of unearned premium to the [Policyholder] for such errors or delays will be made only if the Employee did not contribute toward the

premium payment. Except as stated in the Premium Refunds section of the **Premium Amounts** provision, such return of premium will be limited to the period of 12 months preceding the date of [Carrier's] receipt of satisfactory evidence that such adjustments should be made.

If the age or gender of an Employee is found to have been misstated, and the premiums are thereby affected, an equitable adjustment of premiums will be made.

**C. The Term of the Policy - Renewal Privilege – Termination**

Provision of the **General Provisions** of the [Policy] is amended to include the following sentence at the end of the provision:

Please refer to the **Retroactive Termination of a [Covered Person's] Coverage** provision which also addresses the consequences of fraud or misrepresentation.

D. The following **Retroactive Termination of a [Covered Person's] Coverage** provision is added to the **General Provisions**.

**RETROACTIVE TERMINATION OF A [COVERED PERSON'S] COVERAGE**

[Carrier] will not retroactively terminate a [Covered Person's] coverage under this [Policy] after coverage under this [Policy] take effect unless the [Covered Person] performs an act, practice, or omission that constitutes fraud, or unless the [Covered Person] makes an intentional misrepresentation of material fact. In the event of such fraud or material misrepresentation [Carrier] will provide at least 30 days advance written notice to each [Covered Person] whose coverage will be retroactively terminated.

If a [Policyholder] continues to pay the full premium for a [Covered Person] who is no longer eligible to be covered the [Policyholder] may request a refund of premium as explained in the Premium Refunds provision. If [Carrier] refunds premium to the [Policyholder] the refund will result in the retroactive termination of the [Covered Person's] coverage. The retroactive termination date will be the end of the period for which premium remains paid. Coverage will be retroactively terminated for the period for which premium is refunded.

E. The **Extra Continuation for Disabled Qualified Continuees** provision of the **COBRA Continuation Rights** provision is deleted and replaced with the following:

**Extra Continuation for Disabled Qualified Continuees**

If a Qualified Continuee is determined to be disabled under Title II or Title XVI of the United States Social Security Act on the date his or her group health benefits would otherwise end due to the Employee's termination of employment or reduction of work hours or during the first 60 days of continuation coverage, he or she and any Qualified Continuee who is not disabled may elect to extend his or her 18 month continuation period above for up to an extra 11 months.

To elect the extra 11 months of continuation, the Qualified Continuee or other person acting on his or her behalf must give the Employer written proof of Social Security's determination of his or her disability within 60 days measured from the latest of:

- a) the date on which the Social Security Administration issues the disability determination;
- b) the date the group health benefits would have otherwise ended; or
- c) the date the Qualified Continuee receives the notice of COBRA continuation rights.