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ADVISORY BULLETIN
14-SEH-01

February 20, 2014

To: SEH Program Member Carriers that Issue Coverage
SEH Program Interested Parties
From: Ellen DeRosa Ellen DeRosa
Executive Director

Re: Small Employer Health Benefit Plan Participation Requirements

The purpose of this Advisory Bulletin is to provide guidance with respect to the participation requirements established by N.J.S.A. 17B:27A-24 which are addressed in the SEH Board's regulations at N.J.A.C. 11:21-7.5.

Background
N.J.S.A. 17B:27A-24 provides that a "small employer carrier may require a reasonable minimum participation of eligible employees, which shall not exceed 75%." N.J.A.C. 11:21-7.5(b) addresses the mechanism a small employer carrier must use if the carrier wishes to use a participation requirement that is less than 75%. To date, no carrier has notified the SEH Board that it wishes to use a requirement other than 75%. In recognition of the consistent use of the 75% participation requirement, the standard health benefit plans set forth in the Appendix Exhibits to N.J.A.C. 11:21 specify a 75% participation requirement.

N.J.S.A. 17B:27A-24 provides that in establishing the percentage of employee participation, credit shall be given for employees who are covered by specified coverages. N.J.A.C. 11:21-7.5(a) enumerates the coverages for which participation credit is given.

The law further provides latitude for another minimum participation standard, if "approved by the board and ...applied uniformly to all small groups."

Issue
The SEH Board has received inquiries from some interested parties regarding the 75% participation requirement. The inquirers have expressed concern that some small employers that have been offering small employer health benefit plans for many years will lose such plans in 2014 because they will no longer be able to meet the 75% participation requirement due to some employees, who have previously been covered under the plans offered by small employers, dropping the small employer coverage in order to purchase individual plans with an advanced payment tax credit (APTC).

The SEH Board notes that federal law will not provide an APTC to an employee if the employee is eligible for group coverage that meets minimum value requirements under the federal law and the employee contribution toward the coverage is less than 9.5% of household income. All small employer health benefit plans satisfy the minimum value requirements.

Recognizing that some employees may find the individual market more economically advantageous and that the annual open enrollment period may not be a timely solution for small employers that consequently lose existing coverage, the SEH Board offers the following guidance.

Guidance

A small employer with an inforce small employer health benefit plan is required to provide the annual certification in order to retain coverage under a small employer health benefit plan. Continued satisfaction of the 75% participation requirement is evaluated through the annual certification process. Under the circumstances described below, an exception to the standard may be granted by the Board.

A small employer carrier may submit a request to the SEH Board that would permit the small employer carrier to require less than 75% participation for small employers that meet the following conditions.

IF

A small employer maintains the same or a greater level of contribution toward employee coverage for the new plan year as was provided during the current plan year

AND

One or more of the employees who were covered under the small employer's health benefit plan during the current year refuse coverage for the new plan year

AND

Such employee(s) state that the reason coverage is being refused is they are securing individual coverage with an APTC under the federal law and they provide evidence of eligibility for such individual coverage and APTC

AND

The small employer fails the 75% participation requirement solely because such employees have refused coverage

THEN

The small employer carrier may require less than 75% participation for a small employer.

The SEH Board will review the small employer carrier's request which must include the conditions the carrier proposes to consider. If approved, the small employer carrier shall require the lesser participation requirement for all small employers that satisfy the conditions during the coming plan year.

If you have any questions please send them by email to ellen.derosa@dobi.state.nj.us.