NEW JERSEY
SMALL EMPLOYER HEALTH BENEFITS PROGRAM

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SEH Bulletin 96-01

TO: **SEH PROGRAM MEMBERS & INTERESTED PARTIES**
FROM: **Wardell Sanders, SEH Program Assistant Director**
RE: **PROGRAM CLARIFICATIONS:**
-Adoption of amendments to N.J.A.C. 11:21-3.2(d) and -7.6
-Nonstandard plans and mandatory benefits or mandatory offers
-Must an employee receive pay to be considered an "eligible employee"
-Distinguishing from among employees
-Affiliated Companies
DATE: **January 22, 1996**

This bulletin is to provide information to interested parties regarding a recent rule adoption and addresses commonly asked questions.

I. Adoption of Amendments to N.J.A.C. 11:21-3.2(d) and -7.6

Enclosed please find a copy of recent rule amendments to N.J.A.C. 11:21-3.2(d) and -7.6 which were effective on January 1, 1996. The amendments to N.J.A.C. 11:21-3.2(d) clarify the types of "coverages" that may be altered by optional benefit riders, including the types of dental and vision riders permitted, and clarify the filing requirements for optional benefit riders. The amendments to N.J.A.C. 11:21-7.6 provide that credit towards participation requirements must be given to any employer sponsored "health benefits plan." Previously, the rule required credit only for an indemnity plan and any HMO plan. As an example, under the rule as amended, one small employer could choose to purchase one indemnity plan, one HMO plan, and one POS plan, all from the same or different carriers, and, assuming that 75% or greater of the eligible employees were covered under one of the employer-sponsored health benefits plans or covered under a spouse's plan, the employer would meet the participation requirements of the carrier or carriers.

II. Nonstandard Plans and Mandated Benefits or Mandatory Offers

While the New Jersey Small Employer Health Benefits Act, N.J.S.A. 17B:27A-17 et seq., provides that nonstandard plans may not be altered in any manner except with respect to deductible and copay options, that prohibition may not apply where the Legislature acts to require that certain benefits be provided or offered with health benefits

plans. Unless a mandatory benefit or mandatory offer law provides that such benefits need not be included or offered with nonstandard small employer health benefits plans, it should be assumed that the benefits must be included or offered. If a carrier has questions about whether a law requires a nonstandard plan to include an additional benefit or a mandatory offering of the benefit, the carrier should consult with its legal counsel.

III. Must an Employee receive pay to be considered an "eligible employee"

It has been the Board's intention, since the beginning of the SEH Program, that a carrier could request an employer's tax statements to verify which employees were full-time, paid employees, and that only full-time (working at least 25 hours per week) employees would be eligible for coverage by a guaranteed issue, modified community rated health benefits plan. When the Board originally proposed its regulations in 1993, the proposed rules required carriers to obtain tax statements from small employers in order to verify "eligible employees." Due to a potential conflict with a statute regarding the State's ability to collect such information for non-tax purposes, the requirement was eliminated from the final adopted rules. However, by such action, the Board did not intend to preclude a carrier from initiating a request for such information from a small employer, or using such information to determine whether an employer, or his or her employees, were entitled to coverage.

A guaranteed issue, modified community rated market (in which health status cannot be used to determine rates), could be readily exploited unless there were a means to verify employment. There would be nothing to stop an employer from adding friends or family members to a policy for the duration of an illness, then taking them off the policy after the course of treatment, unless carriers had the means to verify that a covered person really was employed by a small employer. As a result, the SEH Board would not consider someone an "eligible employee," as that term is defined at N.J.S.A. 17B:27A-17 and N.J.A.C. 11:21-1.2, if the person were being paid off the books by a small employer.

IV. Distinguishing from Among Employees

With respect to the issues of whether an employer may distinguish from among his or her employees for purposes of offering coverage, meeting the contribution requirements of the law, or establishing employee waiting periods, the SEH Act is silent. While the SEH Act does not specifically limit the basis upon which an employer may distinguish from among his or her employees, other state and federal laws apply and may limit an employer's ability to distinguish on a basis other than by "class of employee." Classes of employees have traditionally been determined by a condition pertaining to employment or a combination of such conditions. Employers determining classes on a basis other than by a condition or conditions pertaining to employment expose themselves to potential litigation based on impermissible discrimination.

In order to accommodate those employers who wish to distinguish from among their employees, the standard application form for small employer health benefits plans,

the standard policy forms, and standard HMO contract provide for alternative language, permitting employers to make distinctions from among employees based on class of employees. Please note, however, that for purposes of meeting applicable participation requirements, all "eligible employees" must be considered, not just those to whom coverage was offered.

V. Affiliated Companies

For purposes of determining the size of an employer in New Jersey, affiliated companies are treated as one employer. The SEH Board has defined "affiliated company" as follows: "any corporation which is a member of a controlled group of corporations; organization under common control with the small employer; organization which is included with the small employer in an affiliated service group; or other entity required to be aggregated with the small employer, all in accordance with sections 414 and 1563 (without regard to sections 1563(a)(4) and (e)(3)(c)), of the Internal Revenue Code of 1986, as amended."