



**State of New Jersey**  
DEPARTMENT OF BANKING AND INSURANCE  
SMALL EMPLOYER HEALTH BENEFITS PROGRAM  
PO Box 325  
TRENTON, NJ 08625-0325

RICHARD J. CODEY  
*Acting Governor*

TEL (609) 633-1882  
FAX (609) 633-2030

DONALD BRYAN  
*Acting Commissioner*

**ADVISORY BULLETIN**  
**05-SEH-02**

**March 17, 2005**

**To: SEH Program Member Carriers and Interested Parties**

**From: Wardell Sanders, Executive Director**

**Re: What Constitutes “Offering” Coverage; Carriers Issuing Plans to Small Employers That Already Have Coverage; Carriers Issuing Coverage to New Jersey Small Employers with Out-of-State Employees**

On November 1, 2004, the New Jersey Small Employer Health Benefits Program Board issued Bulletin 04-SEH-03 reminding all carriers of their obligation to offer and make standard health benefit plans and riders available. This bulletin clarifies what it means to “offer” coverage, including a carrier’s provision of quotes through a third party. In addition, it identifies a carrier’s obligations to offer standard plans and riders to (1) employers that already have a health benefits plan; and (2) employers with employees who live, reside, or work other than in New Jersey.

What Constitutes Offering Coverage

Pursuant to N.J.S.A. 17B:27A-19a, a carrier is required “to offer” to every small employer the five standard plans developed by the SEH Board and a carrier that is an HMO is permitted to offer a standard HMO plan in lieu of the five plans. And pursuant to N.J.S.A. 17B:27A-19d and 19i, a carrier is similarly required to offer any standard riders and optional nonstandard benefit riders that it has chosen to make available. Thus, the requirement under the SEH Act is the same for standard plans, standard riders, and non-standard riders: “to offer” coverage. Further, pursuant to N.J.A.C. 11:21-7.3(a)3, carriers are required to “actively offer” all of the standard plans and riders it has elected to write, except as such riders may be restricted to specific standard health benefits plans. The SEH Board has received a number of inquiries about what it means “to offer” coverage.

For a carrier “to offer” coverage, it must accurately, promptly and completely inform interested parties of the standard plans that it is required to offer, as well as each rider

option that the carrier has chosen to make available. Furthermore, a carrier must provide small employers with a reasonable means of obtaining a quote for coverage and of applying for and obtaining the coverage. To “offer” coverage within the meaning of the statute, the following minimum standards must be met:

1. A carrier must provide an interested party with a list and comprehensive description of the standard SEH plans, as well as any standard and non-standard optional benefit riders that it makes available, within one business day of the request. **The Board will require carriers to comply with this standard no later than May 2, 2005.**
2. Rate Filings to the New Jersey Department of Banking and Insurance must be provided in accordance with N.J.A.C. 11:21-9.1 et seq. and must include rates for the standard plans and for any available plan design and rider options.
3. A carrier that authorizes either licensed producers or other (licensed or unlicensed) third parties (such as online electronic quoting services) to describe plan options and produce rate quotes is responsible for making sure that producer or other party lists and provides rate quotes for all standard plans as well as optional plans and riders correctly. Except that, if only a partial list is made available, then that third party must prominently include a statement that other plans and riders are available from the carrier with instructions for obtaining quotes for the plans and riders not listed by the third party. Errors in rate quotes are addressed in a Department of Banking and Insurance regulation set forth at N.J.A.C. 11:21-9.6. Lastly, no such producer or third party shall restrict availability or price quotes based on the demographics of the group, including group size or location, except that an HMO carrier may refuse to issue coverage to an employer to cover an employee that does not live, work, or reside in the small employer carrier's service area.
4. As required by N.J.A.C. 11:21-7.9(a), a small employer carrier shall provide a price quote to a small employer, directly or through an authorized third party, within 10 working days of receiving a request for a quote.
5. A carrier must respond to an application and provide an effective date of coverage within the timeframes set forth in N.J.A.C. 11:21-7.8 for all plans and riders which it makes available.

The SEH Board does not equate offering coverage with marketing coverage. The Board recognizes that a carrier may choose to market one plan or rider and may choose not to market other plan options or riders that it makes available. N.J.A.C.11:21-17 sets forth fair marketing standards. Among other things, the regulation requires that all eligibility, coverage and exclusions described in the small employer carrier's marketing and/or promotional material shall be consistent with the Act and this chapter. The marketing materials, which would include proposal text, must clearly describe the nature of the coverage and any limitations. To the extent a carrier is making the standard plans available with a prescription drug rider or with other optional benefit riders, the materials must likewise disclose the nature of the impact of the optional rider or riders on the standard plans and may not use language to suggest that optional benefit rider benefits are standard benefits. This is not intended, however, to require that marketing materials list all limitations, exclusions and other terms and conditions, but a carrier's marketing materials should list what a reasonable broker or employer (depending upon the intended target) would consider a material feature, term or condition of a given optional rider or set of optional riders.

### Carriers Issuing Plans to Small Employers That Already Have Coverage

N.J.S.A. 17B:27A-50 and N.J.A.C. 11:21-7.4 set forth certain limitations on the general requirement that carriers shall offer all plans and riders on a guaranteed issue basis to any small employer. These limitations provide that an employer that currently maintains coverage under any small employer health benefits plan and riders may not purchase a small employer health benefit plan or rider of greater or lesser actuarial value, unless the small employer health benefits plan or rider that the employer most recently purchased has been in effect for at least twelve months. After the most recently purchased health benefits plan or rider has been in effect for at least twelve months, an employer may purchase a new plan or rider at any time, *including off anniversary*. The twelve-month period will be measured from the effective date of the most recently purchased plan or rider.

### Carriers Issuing Coverage to New Jersey Small Employers with Out-of-State Employees

The guaranteed issue protections of the SEH Act extend to all “small employers.” To meet the definition of a “small employer,” an entity must have at least two but no more than 50 eligible employees and a majority of its employees must work at a location in New Jersey. For example, an employer with 20 eligible employees working in New Jersey, and 19 eligible employees working in other states, would be a New Jersey small employer. On the other hand, an employer with 55 eligible employees, and 49 working in New Jersey would not be a small employer, since the total number of eligible employees exceeds 50.

For entities that meet the definition of a small employer, certain rules apply. Given the opportunity for an employer to purchase multiple plans, it is possible that an employer may purchase one plan for New Jersey employees and another plan for employees not in New Jersey. The fact that a New Jersey small employer has employees who live, work or reside outside of New Jersey does not relieve or modify a carrier’s obligation to guarantee issue coverage requested by the employer for such employees, subject to compliance with other states’ laws and requirements for such health benefits plans and products for such employers and employees. If the carrier is an HMO issuing either a closed panel HMO plan or an HMO-POS plan, the HMO cannot be required to issue coverage for a person who lives, works or resides outside the carrier’s approved service area. If such a carrier chooses to issue coverage to small employers to cover employees who live, work or reside outside of the service area, the carrier must make such coverage available to all small employers. If the carrier issuing coverage is not an HMO, there are no service area restrictions, and the carrier must issue coverage to persons who live, reside or work outside New Jersey subject to all laws of the other state(s). An exception to the above guidance would apply if a carrier can show that it would be prohibited from writing the out-of-State employee under the laws of the state of residence of the employee.

If you have any questions, please feel free to call the SEH Program Board office at the number above.