INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Small Employer Health Benefits Program
Small Employer Purchasing Alliances

Adopted New Rules: N.J.A.C. 11:21-9.4 and 21
Adopted Amendments: N.J.A.C. 11:21-7A, 9 and Appendix Exhibit GG

Proposed: April 1, 2002 at 34 N.J.R. 1310(a).

Adopted: October 2, 2002 by Holly C. Bakke, Commissioner, Department of Banking and Insurance.

Filed: October 2, 2002 as R. 2002 d.342, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17B:27A-17 et seq. and 17B:27A-25.9.

Effective Date: November 4, 2002

Expiration Date: September 25, 2003.

Summary of Public Comments and Agency Responses:

The Department received comments from the following: the New Jersey Retail Merchants Association (NJRMA), the Independent Insurance Agents of New Jersey (IIANJ), the law firm of Reed Smith on behalf of Charter Partners, AmeriHealth HMO, Inc. and AmeriHealth Insurance Company of New Jersey, the Guardian Life Insurance Company of America, First Union Insurance Services Agency, Inc., and Kara D. Korosec.

COMMENT: Two commenters expressed their support for the Department's proposed rules. The commenters indicated that the rules will benefit both employees and employers by enhancing the accessibility and affordability of health coverage. One commenter also stated that carriers may

enjoy a larger volume of business by selling to alliances than they would by selling to small employer groups, and that the administrative burden will be less than writing for separate small groups.

RESPONSE: The Department appreciates the commenters' support.

COMMENT: One commenter questioned how small employer groups would go about forming a "purchasing alliance." The commenter also asked if any insurance carriers are currently quoting illustrations for these new alliances, and for a beginning to end guideline as to how this would flow from a broker standpoint.

RESPONSE: Proposed N.J.A.C. 11:21-21 establishes rules for the formation and operation of small employer purchasing alliances.

The commenter's remaining questions are beyond the scope of the proposed rules.

COMMENT: One commenter made the following technical comments concerning proposed N.J.A.C. 11:21-21: (1) At N.J.A.C. 11:21-21.3(a)1i and ii, "the name of the purchasing alliance" is listed twice. (2) At N.J.A.C. 11:21-21.3(a)1iii, the commenter requests clarification as to what the Department means by "the names of the purchasing alliance." (3) At N.J.A.C. 11:21-21.3(a)2 and 3, the requirement regarding the "certification of incorporation" is listed twice. (4) At N.J.A.C. 11:21-21.3(c), the rule requires that any change in the information provided to the Department as part of the original filing be filed with the Commissioner within 30 days of the change. The commenter does not

believe that it is necessary to file a current listing of the membership of the purchasing alliance on a quarterly basis because filing that list and any changes associated with the original membership list will only create additional administrative costs to the purchasing alliance.

RESPONSE: (1) N.J.A.C. 11:21-21.3(a)1i asks for the name of the purchasing alliance, while subparagraph (a)1ii asks for the members of the purchasing alliance; (2) N.J.A.C. 11:21-21.3(a)1iii reads "[t]he names of the board of directors, chairman, treasurer and secretary of the purchasing alliance"; (3) N.J.A.C. 11:21-21.3(a)2 requests a copy of the certificate of incorporation, if any, of the purchasing alliance, while N.J.A.C. 11:21-21.3(a)3 requests a copy of the joint contract executed by all members of the purchasing alliance; (4) The Department is not requesting that purchasing alliances file a membership list quarterly and any changes to the original membership list within 30 days of the change. Rather, the proposed rule requests that a current membership list of the purchasing alliance be filed with the Commissioner quarterly, and that any other change in the information requested at N.J.A.C. 11:21-21.3(a) be filed within 30 days of the change.

COMMENT: One commenter was concerned with proposed N.J.A.C. 11:21-21.5. The commenter disagreed with N.J.A.C. 11:21-21.5(a), which permits an employer to discontinue purchasing coverage as a member of a purchasing alliance at any time. The commenter stated that the employer should only be permitted to discontinue purchasing coverage at the end of a plan

year. The commenter suggested that in the alternative, the rule should provide that a member remains responsible for any administrative fees should it discontinue coverage prior to the end of the plan year. The commenter stated that this additional requirement is necessary to protect the other participating employers because the budget for the year will rely upon all participating employers.

The commenter also disagreed with N.J.A.C. 11:21-21.5(b), which permits a purchasing alliance to include a requirement in its bylaws or joint contract that employers provide no more than 30 days notice of discontinuance to the alliance. The commenter stated that a purchasing alliance should be permitted to mandate that its employer members provide more than 30 days notice of discontinuance to the alliance because an alliance needs sufficient time to make any necessary adjustments to protect its other participating employers. The commenter suggested that the 30-day requirement be changed to 60 days.

RESPONSE: The Department does not believe that applicable Federal and State requirements for the guaranteed issuance of all plans would permit an alliance to require participation in the alliance until a date certain. Such a requirement would effectively prohibit an employer from obtaining replacement coverage. The Department does recognize, however, that for the law to meet its required objectives, it would be beneficial for the alliance to be able to retain its membership and for the carrier to have reasonable expectations about the level of participation in the alliance over a period of time. The Department does not

believe that an alliance would be prohibited from including some type of fee for an employer that leaves an alliance before the plan anniversary or some other date certain.

The Department disagrees with the commenter that N.J.A.C. 11:21-21.5(b) should be modified to permit alliances to require notices of discontinuance of greater than 30 days. The Department is not sure what type of "adjustments" could be made by expanding the notice period beyond 30 days.

COMMENT: One commenter stated that the proposed rules permit small employer purchasing alliances to negotiate premium rates with carriers on behalf of the members of the alliance. The commenter questioned what could be the bases for the carrier discount-broker commission, industry factor, geographic factor?

RESPONSE: The small employer purchasing legislation (see P.L. 2001, c. 225, Section 9k; codified at N.J.S.A. 17B:27A-25k) states that the reduced rate "shall be based on volume or other efficiencies or economies of scale and shall not be based on health status-related factors."

COMMENT: One commenter asked if a carrier accepts one alliance, must it accept all alliances.

RESPONSE: The rules do not require a carrier to accept any alliance at a negotiated rate. By implication, the acceptance of one alliance does not require the carrier to accept (or to negotiate with) any other alliance.

COMMENT: One commenter stated that the proposed rules provide that the small employer purchasing alliance shall have the authority to negotiate premium rates with carriers on behalf of the member of the alliance. Under this provision, may an alliance negotiate with (and offer) multiple carriers?

RESPONSE: An alliance may negotiate with multiple carriers. However, carriers are not required to allow an alliance to offer multiple carriers.

COMMENT: One commenter stated that the proposed rules establish that a purchasing alliance cannot enter into a contract or policy with a carrier until the carrier has made an informational filing with the Commissioner. The commenter questioned when a carrier may "undo" the alliance relationship, and whether a carrier may act as the "alliance trustee."

RESPONSE: As part of alliance negotiations, a carrier may specify its ability to cancel the relationship. While the comment regarding the alliance trustee is beyond the scope of these rules, there is no prohibition on the carrier forming the alliance trust.

COMMENT: One commenter is seeking clarification as to whether an alliance group may move from one alliance to another. The commenter also questioned when a small employer health group may "opt in" and "opt out" of an alliance, and whether groups may cover only some of their members through an alliance.

RESPONSE: Groups may move from one alliance to another, and join or leave alliances. In negotiating an alliance contract, a carrier may specify

whether it will allow members of allliance groups to have some of their members covered by other carriers.

COMMENT: One commenter expressed its concern that the proposed rules do not comply with legislative intent and could have the effect of preventing any carrier from offering a discount to any alliance or, if offered, could have a damaging effect on the standard small employer health market. The commenter stated that proposed N.J.A.C. 11:21-9.4(a)2iii appears to contradict N.J.A.C. 11:21-9.4(a)4iii(4). According to the commenter, the first provision indicates that the alliance premiums must be expressed as a percentage discount off the premiums charged to non-alliance groups. This would seem to be relatively straightforward, but becomes impossible to administer or calculate when read with the second provision. The second provision seems to indicate that the discount negotiated for the alliance will force the carrier to reduce the highest rates for the non-alliance plans to the same rates as the highest alliance rate. As a result, the carrier would no longer be able to express the discount as a percentage of the non-alliance rates because the highest rate for the alliance business would force the carrier to reduce the rate for non-alliance business to the same rate as the alliance rate. The commenter stated that this could not have been the legislative intent. Further, since the Department intends that the discounts be based on savings that are specific to the alliance and not to the normal non-alliance business of the carrier, it is difficult to conclude that efficiencies achieved through an alliance

arrangement should be forced on non-alliance plans where the efficiencies do not exist. The commenter states that the legislation suggests only that the rating structure used by an alliance should be the same 2:1 structure as non-alliance business, not that the alliance rates should force changes to the non-alliance rates.

RESPONSE: The comment raises a concern about how the requirement at N.J.A.C. 11:21-9.4(a)2iii that the alliance discount be a percentage discount from the non-alliance rate coordinates with the requirement at N.J.A.C. 11:21-9.4(a)4iii(4) that the statutory mandate of a 2:1 ratio between the highest and lowest rates be applied to both alliance and non-alliance rates together. However, the comment contains an incorrect analysis, concluding that these two provisions taken together would force a result where an alliance discount could not be offered. Contrary to this analysis, if an alliance had negotiated a five percent discount, a group with a particular age/gender/location distribution in the alliance would pay five percent less than a group with precisely the same age/gender/location distribution not in the alliance. In order to maintain the 2:1 relationship between the highest and lowest rates, the carrier would need to adjust the non-alliance age/gender/location factors to a ratio of 2:1.053. Such an adjustment is permitted by applicable law.

COMMENT: One commenter acknowledged that the Department is required to implement what the commenter believes to be technically flawed legislation. The stated intent of the legislation was to provide small employers

with the same administrative expense advantages as large employers in obtaining affordable health insurance coverage, but the commenter does not believe that it was the intent of the legislature to segment the small employer market. However, this may be the result of the law's provision that requires two separate pools to be set up in determining whether the 75 percent minimum loss ratio is met; one for alliance business and the other for the remainder of the small employer health (SEH) business. The commenter continues by saying that given that the legislation separates experience into two pools for purposes of the 75 percent requirement test, it does not believe that it is appropriate or consistent for the Department to mandate that the morbidity assumptions for pricing alliance vs. other SEH business be identical. The commenter provided a hypothetical example that would result in an overall financial loss to the carrier.

The commenter stated that since the Department's regulations must be consistent with the letter of the law, carriers should be permitted some pricing leeway in anticipating self-selection (and resulting morbidity differentials) if they believe that this will likely be the situation. Otherwise, there will be a major financial disincentive for carriers to participate in the alliance market. The commenter further recognizes that any cost differential, whether through prospective pricing or a retrospective dividend, will adversely segment the small employer marketplace, and strongly urges the Department to work with the Legislature to achieve a technical correction, eliminating the two pool approach.

RESPONSE: The Department agrees that the legislation was intended to make available to small employers the same administrative cost savings as are available to large employers, but that the intent of the legislation was not to segment the SEH market into a healthy alliance pool with lower rates and an unhealthy non-alliance pool with higher rates.

The Department disagrees with the comment that the requirement in the statute that two separate pools be established for purposes of meeting the 75 percent loss ratio requirement is a flaw that will contribute to the undesirable segmentation of the market. The Department considers segmentation to be undesirable and contrary to the enabling legislation. The rules make it clear that alliance rate savings are to be based upon administrative cost savings, and not on favorable morbidity.

The comment implies that the existence of two pools for meeting the loss ratio requirement creates an incentive to form alliances with favorable morbidity in order to exploit this situation. The Department does not believe that this will occur for the following reasons: (1) The conditions under which an alliance would benefit from favorable morbidity are limited to the situation given in the example where the carrier is operating at a 75 percent loss ratio on a pooled basis. While the 75 percent loss ratio is a minimum standard for the SEH market, the average loss ratio in this market is approximately 80 percent, and 80 percent is more typical of the loss ratios of the larger carriers in this market. In such a situation, alliances would have no incentive to select for favorable

mobidity. (2) The formation of alliances with favorable morbidity experience would be difficult given the regulatory restrictions on using health status-related factors as a criterion. Any factor that would be perceived as being effective in selecting risks by morbidity would run the risk of being found to be a *de facto* health status-related factor. (3) The alliance loss ratios calculation is done for all alliances. Therefore, even if an alliance with favorable morbidity were to be formed, any favorable impact could be negated if the carrier also negotiated with alliances with unfavorable morbidity. (4) As the example points out, the "flaw" of two risk pools provides a self-correcting mechanism. If alliances are formed with favorable morbidity that exploits the dividend mechanism, there will be a financial incentive for carriers to stop negotiating. This is a positive, not a negative, result since it will only happen if the alliance concept is not functioning as intended.

The comment suggests that, as a short-term solution, the rules be modified to permit assumptions of more favorable morbidity for alliance groups (and less favorable morbidity for non-alliance groups) in loss ratio certification. The Department believes that this solution is inconsistent with the legislation, and would result in rating based upon health status.

COMMENT: Another commenter expressed concern about the operation of separate pricing and refund arrangements for alliance plans. The commenter stated that the net effect of proposed N.J.A.C. 11:21-9.4(a)1, (a)4i, (a)4iv(3) and (a)4iv(7) would appear to require (a) that alliances not consist of groups with

anticipated experience more favorable than a carrier's book of SEH business (since an actuary could not certify that the anticipated loss ratio exceeds the anticipated loss ratio for the non-alliance book of business), and (b) that no discount be offered for alliance plans (since the reduction in expense and profit must be offset by a higher anticipated loss ratio). The commenter states that while the former result is appropriate to safeguard against the risk of redlining and otherwise drawing off favorable risks, the latter appears to subvert the intent of the underlying statute.

The commenter also stated that it may be that the term "reflects" at N.J.A.C. 11:21-9.4(a)4iv(7) was only intended to ensure that any discount apply to a carrier's retention, by grossing up the 75 percent minimum medical loss ratio to the undiscounted premium. The commenter requested that the Department clarify this provision, and suggested the following revised language: "That the anticipated incurred loss ratio in (a)4iv(3) above equals or exceeds the anticipated incurred loss ratio for the reference filing divided by the difference between one and the discount rate referred to in (a)2iii above."

RESPONSE: The Department disagrees with the commenter. The comment states as part of its contention that the rules result in a requirement that an actuary could not certify that the anticipated loss ratio for the alliance block of business exceeds the anticipated loss ratio for the non-alliance block of business. This is incorrect. This requirement is not found in the rules, and it cannot be logically deduced from the rules.

The rules require that the loss ratio certification must assume the same morbidity for alliance and non-alliance business (see N.J.A.C. 11:21-9.4(a)4ii). The rules do not state that the loss ratios must be the same for alliance and non-alliance business. In fact, if alliance and non-alliance business have the same morbidity assumptions, and the alliance business additionally has a premium discount, the alliance loss ratio will exceed the non-alliance loss ratio by an amount that is explained by the aggregate alliance discounts.

The Department believes that the substitute language suggested by the commenter is the appropriate implementation of the requirement in most cases. However, this language is rigid, and assumes only one alliance discount rate. The Department believes that the existing language is adequate, and prefers the flexibility of the more general language in the proposal.

COMMENT: One commenter stated that since alliances may be created based on geography, trade or business, a more positive statement prohibiting establishment of plans for groups with better than anticipated morbidity would clarify the regulation.

RESPONSE: The Department understands the concern raised by the commenter (that is, that the purchasing alliance concept not result in the establishment of pools of SEH contracts with better experience, and lower rates reflecting that experience). However, the Department cannot prohibit establishment of an alliance solely on the grounds that it has better than anticipated mortality. Furthermore, the Department believes that the criterion of

better than anticipated mortality would be almost impossible to enforce prospectively. The Department believes that the best response to the commenter's concern is to monitor the experience of alliance and non-alliance business, and determine if a better than average alliance pool is being created. In such a situation, the Department would suggest corrective legislation.

COMMENT: One commenter stated that proposed N.J.A.C. 11:21-9.4(a)3ii and (a)4iii(4) seem to suggest that the 2:1 maximum ratio between highest and lowest rated plans applies to a carrier's mixture of alliance and non-alliance business. According to the commenter, this has the effect of diminishing the spread in either market. To the extent it operates to suppress discounting rates for alliance plans, it seems inconsistent with the statutory intent of making less expensive plans available. The commenter suggested applying the 2:1 test separately to each market.

RESPONSE: The commenter is correct that the 2:1 requirement applies to the mixture of alliance and non-alliance business. The Department disagrees that this restriction is inconsistent with statutory intent. The discounting for alliance plans is permitted in the context of mandated modified community rating (the 2:1 ratio requirement). This limitation is fundamental to the design of the SEH program. The Department does not believe that it was either necessary or indicated that discounting should be interpreted effectively to expand that ratio.

The Department disagrees that its proposal will affect materially the availability of discounted plans. The Department believes that the likely result of

this rule provision will be that carriers will compress slightly the ratio between highest and lowest rates on a non-discounted basis. For example, if the maximum alliance discount contemplated is 10 percent (which the Department considers a reasonable assumption), then a carrier would adjust these factors to reduce the ratio from 2:1 to roughly 1.9:1. The SEH market already functions with carriers being restricted in their ability to reflect the true effect of age, gender and geography in rates (If companies in the SEH market were permitted to reflect age and gender, the ratio between highest and lowest rates would be on the order of magnitude of 5:1). Therefore, the Department believes that a further slight restriction would be harmful to the market.

Federal Standards Statement

These adopted new rules and amendments regarding small employer purchasing alliances do not attempt to regulate an area already regulated by the Federal government through statutes, rules or otherwise. The new rules and amendments are not subject to any Federal standards or requirements. Thus, no Federal standards analysis is necessary.

Full text of the adoption follows:

SUBCHAPTER 7A. LOSS RATIO REPORTS; DIVIDENDS AND CREDITS

11:21-7A.2 Definitions

The following terms, when used in this subchapter, shall have the following meanings:

. . .

"Small employer purchasing alliance," "purchasing alliance" or "alliance" means a small employer purchasing alliance as established pursuant to N.J.S.A. 17B:27A-25.3.

. . .

11:21-7A.3 Filing of loss ratio reports

(a) Each carrier having the five standard health benefits plan policy forms, open or closed nonstandard health benefits plan policy forms or HMO plans in force at any time during the preceding calendar year shall file with the Department an annual loss ratio report on the form appearing as Exhibit GG in the Appendix to this chapter, incorporated herein by reference. The annual loss ratio report, beginning with 1997 data reported in 1998, shall:

1. Aggregate standard health benefit plans, other than alliance plans, including all standard and nonstandard riders and endorsements thereto;

2. Aggregate open nonstandard health benefits plans, including all riders and endorements thereto; [and]

3. Aggregate closed nonstandard health benefits plans, including all riders and endorsements thereto[.] ; and

4. Aggregate alliance health benefits plans, including all riders and endorsements thereto.

(b) - (c) (No change.)

11:21-7A.5 Dividend or credit plan

(a) If the preceding calendar year loss ratio for any of the classifications listed in N.J.A.C. 11:21-7A.3(a) is less than 75 percent, the carrier shall include within the loss ratio report a plan to be approved by the Department for the distribution of all dividends and credits against future premiums for all policyholders with that classification in the preceding calendar year in an amount sufficient to assure that the claims in the preceding calendar year plus the amount of the dividends and credits shall equal 75 percent of the premiums for that classification in the preceding calendar year.

1. (No change.)

2. Carriers that issue health benefits plans to small employers that are members of purchasing alliances shall specify in the plan for distribution of dividends and credits that dividends and credits for such health benefits plans shall be paid or credited, as applicable, to the small employers covered under the health benefits plans, not the trust, association or other multiple employer arrangement.

(b) The experience for all non-alliance standard health benefits plans shall be combined for dividend purposes.

(c) The experience for all alliance health benefits plans shall be combined for dividend purposes. The experience for alliance health benefits plans shall not be combined with the experience for non-alliance standard health benefits plans, or the experience of open or closed non-standard health benefits plans, for dividend purposes.

Recodify existing (c) - (g) as (d) - (h) (No change in text.)

SUBCHAPTER 9. INFORMATIONAL RATE FILING REQUIREMENTS PURSUANT TO THE SMALL EMPLOYER HEALTH BENEFITS PROGRAM

11:21-9.3 Informational rate filing requirements for small employer health benefits plans issued or renewed after December 31, 1993

(a) All carriers issuing policies, contracts or certificates under health benefits plans to small employers, including any standard or nonstandard rider option, prior to issuing any policy, contract or certificate under such plan, shall file with the Commissioner an informational rate filing which shall include the following data:

1. - 2. (No change.)

3. A detailed actuarial memorandum setting forth the assumptions and methods used in the development of the rates, which shall include:

i. - iii. (No change.)

iv. A certification signed by a member of the American Academy of Actuaries attesting as follows:

(1) - (4) (No change.)

(5) That rates to be charged to any group do not vary based on any classification factor other than those permitted in [(a)2ii] (a)2i above; and

(6) (No change.)

v. (No change.)

(b) – (d) (No change.)

. . .

11:21-9.4 Purchasing alliances

(a) All carriers providing discounts to small employer purchasing alliances shall file an informational rate filing with the Commissioner prior to the date of providing such discounts, which shall include the following data:

1. A statement that the discount is based on reductions in anticipated expenses and profit margins and not on favorable claims experience;

2. Information regarding the discounts, including:

i. The small employer rate filings ("reference filing") pursuant to N.J.A.C. 11:21-9.3 to which the discounts apply;

ii. Eligibility requirements that a small employer group must satisfy, including participation requirements or cost-sharing requirements;

iii. The amount of the discounts expressed as a percentage of the non-alliance premium for the same coverage and small employer group. If the same discount is not offered to all purchasing alliances, the criteria for the variation in the discount, which shall not include any of the factors set forth at N.J.A.C. 11:21-21.4(a);

iv. The contract issue or renewal period to which the discounts apply, the time period for which the discount is guaranteed, and any conditions for maintaining the discount; and

v. A statement that the same discount is available to all members of the purchasing alliance;

3. Information regarding the application of the discount to a particular group, including:

i. A written description in plain language of the method by which the discounted rate is obtained from the reference rate; and

ii. A detailed example calculation, in the proposal format used by the carrier, of the application of the discount to the example calculation found in the reference filing, showing all the steps necessary to develop the discounted premium from the undiscounted premium, and demonstrating the adjustment, if any, to achieve the required 200 percent maximum ratio between

the premiums for the highest rated group and the lowest rated group in the State;

4. An actuarial memorandum setting forth the assumptions used in the development of the discount, which shall include:

i. The anticipated claim cost for the purchasing alliances;

ii. A demonstration that the discount is based on the anticipated expenses (including marketing and claims administration expenses) and profit margins, identifying those differences from the anticipated expenses and profit margins in the reference filing that are the only bases for the purchasing alliance discount;

iii. A statement whether or not the policyholder shall or may receive policyholder dividends, other than the dividends required by N.J.S.A. 17B:27A-25(g)(2). If such dividends are payable, the carrier shall also submit the following:

(1) The detailed assumptions and practices for determining and distributing such dividends; and

(2) A demonstration that such dividends are not in violation of 4iv(4), 4iv(5) or 4iv(6) below, as appropriate; and

iv. A certification signed by a member of the American Academy of Actuaries attesting to the following:

(1) That the filing is accurate and complete, and complies with the provisions of this subchapter;

(2) The issue period for which the discount is applicable;

(3) The anticipated incurred loss ratio for each plan offered to purchasing alliances, which shall not be less than 75 percent of the premium;

(4) That the rating methodology, taking into account both discounted and undiscounted rates, shall not provide rates for the highest group in the State that are greater than 200 percent of the rates (for an individual and each family status) produced for the lowest rated group in this State for each plan and option;

(5) That the rates to be charged to any group do not vary based on a classification factor other than those permitted in N.J.S.A. 11:21-9.3(a)2i;

(6) That discounted rates do not result in rates that vary between groups based upon a health status-related factor; and

(7) That the anticipated incurred loss ratio in (a)4iv (3) above exceeds the anticipated incurred loss ratio for the reference filing by an amount that reflects the expense and profit savings attributed to the purchasing alliance.

(b) A single filing shall be made, even if multiple purchasing alliances are covered. The addition of purchasing alliances or other changes shall require

submission of an amendment or modification to the rate filing within 30 days of such change.

11:21-[9.4] 9.5 Informational filing procedures

(a) - (e) (No change.)

(f) The Commissioner may disapprove a purchasing alliance rate reduction if it results in rates that are excessive, inadequate or unfairly discriminatory.

1. Rates will be considered excessive if they are projected to give rise to a loss ratio that is less than the loss ratio for the reference rate filing, increased by an amount that reflects the savings giving rise to the discount.

2. Rates will be considered inadequate if they result in a subsidization of the alliance business by the non-alliance business.

3. Rates will be considered unfairly discriminatory if they are based on a health status-related factor of the group or any individual eligible for coverage in the group.

SUBCHAPTER 21. SMALL EMPLOYER PURCHASING ALLIANCES

11:21-21.1 Purpose and scope

(a) This subchapter implements P.L. 2001, c. 225 by establishing rules for the formation and operation of small employer purchasing alliances.

(b) This subchapter shall apply to eligible groups of small employers as defined in P.L. 1992, c.162 (N.J.S.A. 17B:27A-17.)

11:21-21.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Small employer purchasing alliance," "purchasing alliance" or "alliance" means a small employer purchasing alliance as established pursuant to N.J.S.A. 17B:27A-25.3.

11:21-21.3 Filings requirements

(a) Within 30 days of formation, a small employer purchasing alliance shall file the following with the Commissioner:

1. A certification of an officer or director of the purchasing alliance, which shall include:

i. The name of the purchasing alliance:

ii. The members of the purchasing alliance;

iii. The names of the board of directors, chairman, treasurer and secretary of the purchasing alliance;

iv. The New Jersey mailing address at which communications for the purchasing alliance are to be received;

v. The toll free telephone number for prospective members to use to contract the purchasing alliance;

vi. The eligibility requirements for membership in the purchasing alliance;

vii. The fees charged to members of the purchasing alliance; and

viii. A description of the SEH standard plans, and any optional benefit riders, for which the purchasing alliance negotiates or intends to negotiate premiums for its members;

2. A copy of the certificate of incorporation, if any, of the purchasing alliance;

3. A copy of the certificate of incorporation, if any, of the purchasing alliance;

4. A description of the eligible small employers that constitute the purchasing alliance, including their common or similar type of trade or business; the common trade association, professional association or other associations; or common geographic area;

5. A copy of the bylaws of the purchasing alliance, which shall include:

i. The procedures for the organization and administration of the purchasing alliance; and

ii. The procedures for the qualification and admission of additional members of the purchasing alliance; and

6. Information about the procedures a small employer should follow to join the purchasing alliance, including a contact person, address, telephone number, and eligibility requirements for membership.

(b) Filings shall be submitted to:

N.J. Department of Banking and Insurance

Att: SHE Rate Filings

20 West State Street

P.O. Box 325

Trenton, NJ 08625-0325

(c) A current listing of the membership of the purchasing alliance as required by (a)1ii above shall be filed with the Commissioner quarterly. Any other change in the information specified in (a) above shall be filed with the Commissioner within 30 days of the change.

11:21-21.4 Eligibility requirements

(a) No purchasing alliance shall use as a basis for exclusion from membership in the alliance any of the following characteristics of any small employer group as a whole, or any person eligible for coverage in that group:

1. Health status;

2. Medical condition, including both physical and mental illness;

3. Claims experience;

4. Receipt of health care;

5. Medical history;

6. Genetic information;

7. Evidence of insurability, including conditions arising our of acts of domestic violence;

8. Partial or total disability;

9. Group size;

10. Age;

11. Gender; or

12. Any other health status-related factor.

(b) A purchasing alliance shall not inquire as to the insured or uninsured health care claims experience or cost of any employers or employee.

11:21-21.5 Termination of membership in a purchasing alliance

(a) An employer may discontinue purchasing coverage as a member of a purchasing alliance at any time.

(b) A purchasing alliance may include a requirement in its bylaws or joint contract that employers provide no more than 30 days notice of discontinuance to the alliance.

11:21-21.6 Violations and penalties

(a) Failure to comply with any of the requirements of this subchapter shall be a violation of P.L. 2001, c. 225 (N.J.S.A. 17B:27A-25.1 et seq). If the Commissioner, after notice and a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14b-1 et seq., finds that such a violation exists, the premium reduction permitted by N.J.S.A. 17B:27A-25 shall not be applied, and the undiscounted applicable SEH rate shall be applied retroactive to the effective date of the discount.

inoregs/bbsehpur

APPENDIX
EXHIBIT GG

Loss Ratio Report Form
New Jersey Small Employer Health Benefits Program
Reporting Year _____
For Preceding Calendar Year Ending December 31, _____

Name of Carrier: _____ NAIC # _____

Address: _____

Check one: Insurance Company _____ HMO _____ Service Plan _____

A separate Report Form shall be completed and filed for each affiliate in addition to a combined report form for affiliated insurance companies or affiliated HMOs. Definitions and instructions regarding words and terms appearing below may be found on the reverse side.

	Total	Standard Plans	Open Non-Standard Plans	Closed Non-Standard Plans	Purchasing Alliance Plans
1. Premiums	_____	_____	_____	_____	_____
2. Claims (a. +b.-c. +d.-e)	_____	_____	_____	_____	_____
(See definitions, reverse side)					
a.	_____	_____	_____	_____	_____
b.	_____	_____	_____	_____	_____
c.	_____	_____	_____	_____	_____
d.	_____	_____	_____	_____	_____
e.	_____	_____	_____	_____	_____
3. Loss Ratio (2./1.)	_____	_____	_____	_____	_____
4. Dividends (.75 x 1.-2.)*	_____	_____	_____	_____	_____
5. Dividend Percentage (4. + 1.)	_____	_____	_____	_____	_____