

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

Individual Health Coverage Program

Individual Health Benefits Plans

Proposed Amendments: N.J.A.C. 11:20 Appendix Exhibits A and B

Authorized By: New Jersey Individual Health Coverage Program Board, Ellen DeRosa,
Executive Director.

Authority: N.J.S.A. 17B:27A-2 to -16.5

Calendar Reference: See Summary below for explanation of inapplicability of calendar
requirement.

Proposal Number: PRN 2021-

As required by N.J.S.A. 17B:27A-16.1, interested parties may testify with respect to the
standard health benefits plans set forth in N.J.A.C. 11:20 Appendix Exhibits A and B at a **public
hearing** to be held at 10:00 on Wednesday, March 31, 2021 by teleconference in accordance with
P.L. 2020, c. 11 using the following teleconference information: Dial-in number 888-204-5984;
Access Code: 3649940#.

Submit comments by April 7, 2021 to:

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New Jersey Individual Health Coverage Program Board
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The agency proposal follows:

Summary

The Individual Health Coverage (IHC) Program was established in accordance with P.L.
1992, c. 161. The IHC Program is administered through a Board of Directors (Board or IHC
Board). The primary functions of the IHC Program and its Board are the creation of standard
health benefits plans (standard plans) to be offered in the individual market in New Jersey and the
regulation of the individual health coverage market. There are five standard plans, which have
been established through rule, and are set forth in Exhibits A and B of the Appendix to N.J.A.C.

11:20. The rules for the IHC Program, along with Exhibit C, provide explanations of how certain variables in the standard plans may be used by carriers.

The IHC Board proposes the following amendments to the standard plans in Appendix Exhibits A and B.

To comply with the requirements of P.L. 2019, c. 472, which requires carriers to limit the cost sharing liability for prescription drugs under certain plans, the Board proposes amendments to the specimen schedule pages to illustrate the maximum amount a covered person can be required to pay for a 30-day supply of a covered prescription drug.

To comply with the requirements of P.L. 2019, c. 58, the Board proposes the following amendments to the Definitions section:

- The definition of developmental disability, which is also referred to as neurodevelopmental disability is amended to refer to a neurodevelopmental disorder as referenced by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), and any subsequent editions. The IHC Board notes that the replaced definition was taken from a 1985 law and assumed a distinction between mental and physical impairments. Pursuant to P.L. 2019, c. 58 and the DSM-5, such a distinction does not exist for developmental disability.
- A definition of Mental Health Condition consistent with the definition in P.L. 2019, c. 58 is added and replaces the previously defined term Mental Illness.
- The term Mental Health Conditions replaces Mental Illness in various definitions and wherever the term appears throughout the forms.
- A definition of Same Terms and Conditions consistent with the definition in P.L. 2019, c. 58 is added.

The definition of Generic Drug is amended to include variable text a carrier may elect to include stating that an “authorized generic drug” is not a generic drug. The U.S. Food and Drug Administration uses the term authorized generic drug to identify an approved brand name drug that is marketed without the brand name on the label. Although the term includes the word generic, an authorized generic drug is not a generic drug, and the cost sharing a carrier applies to an authorized generic drug will not necessarily be generic drug cost sharing.

To address the requirements of P.L. 2019, c. 343, regarding breastfeeding support, the definition of practitioner is expanded to include lactation consultants and lactation counselors.

To comply with 45 CFR 155.420, which addresses special enrollment periods and the events that allow a special enrollment period, the Board proposes amendments to the definition of triggering event to add the following events:

- The end of the plan or policy year under a non-calendar year group health plan or individual health insurance coverage if the plan or coverage is not renewed or the Eligible Person elects not to renew the coverage.
- The last day of access to pregnancy-related coverage or access to health care services through coverage provided to the eligible person's unborn child.
- The last date of coverage under medically needy coverage as described under Section 1902(a)(10)(C) of the Social Security Act (42 U.S.C. § 1396a(a)(10)(C)).
- The date an Eligible Person or his or her Dependent becomes newly eligible to enroll for marketplace coverage because he or she newly satisfies the requirements under 45 CFR 155.305(a)(1) or (2) which generally pertains to citizenship, to status as a national, lawful presence in the United States, and not being incarcerated.
- The date an Eligible Person or his or her Dependent experiences a decrease in income such that he or she is newly determined eligible for a subsidy provided he or she demonstrates having minimum essential coverage for one or more days during the 60 days preceding the date of the decrease in income.
- The date of a determination that an Eligible Person's enrollment or non-enrollment in a qualified health plan was unintentional, inadvertent, or erroneous and was the result of the error, misrepresentation, misconduct or inaction of the marketplace or a non-marketplace entity providing enrollment assistance or conducting enrollment activities.
- The date the Eligible Person demonstrates to the marketplace that he or she meets other exceptional circumstances as the marketplace may provide.
- One time per month for a person who gains or maintains status as an Indian, as defined by section 4 of the Indian Healthcare Improvement Act (25 U.S.C. §1603(13)), allowing a new enrollment or a plan change through the marketplace.
- One time per month for a person who is or becomes a dependent of an Indian, as defined by section 4 of the Indian Healthcare Improvement Act (25 U.S.C. §1603(13)), and who is enrolled or who is enrolling as a Dependent of an Indian, allowing a plan change at the same time as the Indian.

In addition to the changes to comply with 45 CFR 155.420, the Board also proposes the following amendments to the definition of triggering event as follows:

- The triggering event addressing a change in subsidy also occurs due to a change in cost sharing reduction.
- The triggering event addressing gaining or becoming a dependent also occurs in the instance of a child support order or other court order and thus a child support order or other court order is proposed to be added to this triggering event and child support order or other court order is proposed to be deleted as a separately listed triggering event.

To comply with 84 F.R. 28888 (June 20, 2019) (amending 45 C.F.R. Parts 144, 146, 147 and 155) regarding Health Reimbursement Arrangements and Other Account-Based Group Health Plans, the IHC Board proposes an amendment to the definition of Triggering Events to include the effective date of an individual coverage Health Reimbursement Arrangement (HRA) or Qualified Small Employer Health Reimbursement Arrangement (QSEHRA).

Bulletin 20-35 issued by the Department of Banking and Insurance requires individual exchange plans to define the date pregnancy as confirmed by a health care provider as a triggering event. The Board determined that since the standard plans are used for exchange business as well as business written outside the exchange that this new triggering event should be applied to both individual exchange plans as well as individual plans sold off the exchange. Therefore, to comply with the requirements of Bulletin 20-35 with respect to individual exchange plans, and the Board's policy determination with respect to off exchange plans, the Board proposes amending the definition of triggering event to include the date of confirmation of pregnancy by a practitioner, which is the term the standard plans use for a health care provider.

In light of the transition to a State-based Exchange the Board proposes designating the term "marketplace" as variable and including "exchange/other appropriate term" as potential alternate text. This variable language would permit carriers to include the term appropriate for the State-based Exchange.

To comply with the requirements of P.L. 2019, c. 58, the Board proposes re-naming the Mental Illness or Substance Use Disorder provision as Mental Health Conditions or Substance Use Disorder and stating that the benefits for treatment of mental health conditions are subject to the same terms and conditions as apply to other medical or surgical benefits. The IHC Board notes that P.L. 2017, c. 28 also governs specific benefits for the treatment of substance use disorder.

The Board proposes the inclusion of a new provision to address the coverage requirements of P.L. 2019, c. 343 with respect to breastfeeding support. As indicated on the specimen schedule pages, no cost sharing can be required for such coverage.

The Board proposes removing the variable brackets around the Donated Human Breast Milk provision. The text was adopted prior to the January 1, 2019 effective date of P.L. 2017, c. 309 and could thus be omitted in plans issued or renewed prior to January 1, 2019. With the effective date past, all plans must include the text.

The IHC Board proposes amending the prescription drugs provision to delete text that is no longer necessary. Twenty years ago, pre-authorization for certain prescription drugs was relatively new, and a provider could have written a prescription for which pre-authorization was required, but the provider may not have been aware of the pre- authorization requirement for certain drugs or may have otherwise neglected to obtain pre-authorization. A patient bringing the prescription to the pharmacy would not have been able to secure the prescription the provider prescribed. As a safety net, the Board included text in the prescription drugs provision to require coverage of a 96-hour supply to allow time for the pre-authorization process to occur. The Board notes that prescribing processes have evolved to the point where most prescriptions are issued electronically, and providers have access to real-time information regarding authorization for prescription drugs. Therefore, the need for a 96-hour supply no longer exists. The IHC Board notes that no statute or regulation required the inclusion of the 96-hour supply provision.

To comply with the requirements of P.L 2019, c. 361, the Board proposes amending the Contraceptives provision to include the required services and supplies. The amendments include variable text applicable to a high deductible health plan. The specimen schedule pages illustrate that the benefit is covered without cost sharing except with respect to male contraceptives and male sterilization if the plan is a high deductible health plan. The Board notes that to comply with the requirements of a catastrophic plan the cost sharing for male contraceptives and male sterilization cannot be waived.

To comply with the requirements of P.L. 2019, c. 58, the IHC Board proposes amendments to both the Therapy Services provision and the Diagnosis and Treatment of Autism and Other Developmental Disabilities provision. As explained regarding the proposed amendments to the definition of developmental disability, the terms neurodevelopmental disability and a developmental disability can be used interchangeably. Since neurodevelopmental disability is

included in the definition of mental health condition, benefits for the treatment of a developmental disability must be provided subject to the same terms and conditions that apply to medical and surgical benefits. Thus, visit limits for therapy services cannot be applied to therapies to treat a developmental disability. The Therapy Services provision is amended to direct the reader to the Diagnosis and Treatment of Autism and Other Developmental Disabilities provision for a complete discussion of the covered therapy benefits. The Diagnosis and Treatment of Autism and Other Developmental Disabilities provision is proposed to be amended to remove all visit limits and to explicitly state that pre-approval cannot be required. The sample schedule page text is similarly amended to remove impermissible limits.

The Board proposes amending the Transplant Benefits provision to update the list of transplants to include all non-experimental or investigational transplants currently performed. The Board notes the existing list dates to 1994.

The Board proposes deleting the exclusions for nicotine dependence treatment since the exclusion is inconsistent with the requirements of P.L. 2019, c. 58.

The Board proposes adding variable text to the exclusion for immunization agents under outpatient coverage for prescription drugs. While plans currently cover immunizations given at a pharmacy by an immunizing pharmacist, the coverage is provided as a medical benefit. The variable text would allow a carrier to cover the immunizations as a pharmacy benefit. The Board notes the immunizations available at a pharmacy are generally preventive, such as influenza immunizations, and thus no cost sharing applies whether covered under the medical or prescription drug benefit.

The Board proposes amending the non-prescription drugs exclusion and the exclusion addressing drugs without a prescription to address coverage of over-the-counter contraceptives as required by P.L. 2019, c. 361.

To eliminate conflicting exclusion text, the Board proposes deleting the exclusion for “vitamins, except Legend Drug vitamins” and amending an existing exclusion for “vitamins and dietary supplements” to except those vitamins covered as preventive care from the exclusion. Consistent with the deletion of the exclusion that referred to Legend Drug vitamins, the term Legend Drug is proposed to be deleted from the Definitions section.

The IHC Board proposes amendments to the Payment of Premiums - Grace Period provision to delete text that was misinterpreted as limiting the premium payor to the policyholder.

Rather than stating premiums must be paid by “You”, where “You” is the term defined to mean the policyholder, the proposed amendments state the fact that premiums must be paid. Related to this amendment, the Board proposes amending the Newborn Children provision so it is clear premiums must be paid for coverage beyond the initial 60 days, and that the premium payor is not limited to the policyholder.

The IHC Board proposes amending the Renewal Privilege - Termination provision to permit a policyholder to make a prospective request to terminate the policy. The requested termination date need not coincide with the end of the period for which premiums have been paid. Unearned premium will be refunded.

IHC Rulemaking Procedures

The IHC Board is proposing these amendments in accordance with the special action process established at N.J.S.A. 17B:27A-16.1, as an alternative to the common rulemaking process specified at N.J.S.A. 52:14B-1 et seq. Pursuant to N.J.S.A. 17B:27A-16.1, the IHC Board may expedite adoption of certain actions, including modification of the IHC Program’s health benefits plans and policy forms, if the IHC Board provides interested parties a minimum 20-day period during which to comment on the Board’s intended action following notice of the intended action in three newspapers of general circulation, with instructions on how to obtain a detailed description of the intended action, and the time, place, and manner by which interested parties may present their views regarding the intended action. Concurrently, the IHC Board must forward notice of the intended action to the Office of Administrative Law (OAL) for publication in the New Jersey Register, although the comment period runs from the date the notice is submitted to the newspapers and OAL, not from the date of publication of the notice in the New Jersey Register. The IHC Board also sends notice of the intended action to affected trade and professional associations, carriers, and other interested persons who may request such notice. In addition, for intended modifications to the health benefits plans, the IHC Board must allow for testimony to be presented at a public hearing prior to adopting any such modifications. Subsequently, the IHC Board may adopt its intended action immediately upon the close of the specified comment period or close of a public hearing (whichever is later) by submitting the adopted action to the OAL for publication. The adopted action is effective upon the date of its submission to the OAL, or such later date as the Board may designate. If the Board does not respond to commenters as part of the notice of adoption, the Board will respond to the comments timely submitted within a reasonable period of

time thereafter in a separately prepared report that will be submitted to OAL for publication in the New Jersey Register. Pursuant to N.J.S.A. 17B:27A-16.1, all actions adopted by the Board are subject to the requirements of this special rulemaking procedure notwithstanding the provisions of the Administrative Procedure Act. As a result, the quarterly calendar requirement set forth at N.J.A.C. 1:30-3.1 is not applicable when the Board uses its special rulemaking procedures.

Please note that since this procedure allows a 20-day comment period, it is likely the comment period will expire prior to publication of the notice of proposal in the New Jersey Register.

Social Impact

The IHC Board anticipates that compliance with the newly enacted mental health conditions, contraceptives, breastfeeding support and prescription drugs laws will have a positive social impact for those consumers who will benefit from the coverage the laws require. The Board anticipates the updated list of transplants will have a positive social impact in that it will ensure all covered persons are aware of the extent of coverage and receive necessary and appropriate transplant services. The IHC Board expects that the updated list of triggering events will have a positive social impact in that it will help heighten awareness of the opportunity for a special enrollment period, allowing more people to access coverage.

Economic Impact

The IHC Board expects that additional coverage for the treatment of mental health conditions, as well as coverage of contraceptives, and breastfeeding support and the limits on cost sharing for prescription drugs will provide a positive economic impact for consumers.

The IHC Board expects the inclusion of a more comprehensive list of triggering events will help facilitate the enrollment of persons entitled to a special enrollment period and the positive economic impact of having coverage.

The IHC Board does not have information necessary to quantify the economic impact in terms of the amount of benefits carriers will be required to pay nor the resulting impact on premiums for coverage.

Federal Standards Statement

State agencies that propose to adopt or amend State rules that exceed Federal standards regarding the same subject matter are required to include in the rulemaking document a Federal standards analysis. As discussed in the Summary above, some of the proposed amendments are

intended to comply with Federal law, 45 CFR 155.420 and 84 F.R. 28888. The proposed amendments do not exceed the requirements of 45 CFR 155.420 and 84 F.R. 28888. Accordingly, a Federal standards analysis is not required.

Jobs Impact

The IHC Board does not anticipate that any jobs will be generated or lost as a result of the proposed amendments. Commenters may submit data or studies on the potential jobs impact of the proposed amendments together with their comments on other aspects of the notice of proposal.

Agriculture Industry Impact

The IHC Board does not believe the proposed amendments will have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The IHC Board believes the proposed amendments may apply to one or more carriers that are “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 to -21. The proposed amendments do not establish new or additional reporting or recordkeeping requirements, but have the effect of establishing new compliance requirements, as described in the Summary above.

No differentiation in compliance requirements is provided based on business size. The requirements of, and the goals to be achieved by, the Federal and State laws in question do not vary based on the business size of a carrier, and the IHC Board would not be at liberty to make such a distinction, even if the IHC Board were to consider such a distinction warranted. Accordingly, the proposed amendments provide no differentiation in compliance requirements based on business size. No additional professional services would have to be employed in order to comply with the proposed amendments.

Housing Affordability Impact Analysis

The IHC Board does not believe the proposed amendments will have an impact on housing affordability in this State or evoke a change in the average costs of housing in this State because the proposed amendments relate to the benefit levels and terms of standard health benefits plans offered in New Jersey for purchase by individuals.

Smart Growth Development Impact Analysis

The IHC Board does not believe the proposed amendments will have an impact on smart growth in the State or that the proposed amendments will have an effect on smart growth

development in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments relate to the benefit levels and terms of standard health benefits plans offered in New Jersey.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The IHC Board has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

APPENDIX

OFFICE OF ADMINISTRATIVE LAW NOTE: The New Jersey Individual Health Coverage Program Board is proposing amendments to N.J.A.C. 11:20 Appendix Exhibits A and B. Pursuant to N.J.S.A. 52:14B-7(c) and N.J.A.C. 1:30-5.2(a)2, the Exhibits as proposed are not published herein, but may be reviewed by contacting:

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20 West State Street, 11th Floor
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