

## **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 through 16.5.

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

Proposal Number: PRN 2022- .

As required at N.J.S.A. 17B:27A-16.1, interested parties may testify with respect to the standard health benefits plans set forth at N.J.A.C. 11:20 Appendix Exhibits A and B at a virtual **public hearing** via Microsoft Teams to be held at 10:00 A.M. on Thursday, December 15, 2022 in accordance with P.L. 2020, c. 11.

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Phone Conference ID: 220 342 805#

Submit comments by December 23, 2022 to:

Ellen DeRosa

Executive Director

New Jersey Individual Health Coverage Program Board

PO Box 325

Trenton, NJ 08625-0325

Email: [ellen.derosa@dobi.nj.gov](mailto:ellen.derosa@dobi.nj.gov)

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 at Exhibits A and B of the Appendix of N.J.A.C. 11:20. The rules for the IHC Program, along with Appendix 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 at N.J.A.C. 11:20 Appendix Exhibits A and B.

Recognizing that every carrier produces schedule pages to accommodate specific plan designs, and the impossibility of offering sample schedule pages to address myriad designs, the Board proposes eliminating many of the sample schedule plans and retaining some samples to

illustrate basic coverage. With respect to the HMO plan, Exhibit B, a limits section is proposed to be added to the schedule using text based on the payments limits section in Plans A/50-D, Exhibit A.

To comply with the non-discrimination provisions discussed in the adopted Plan and Benefit Payment Parameters for 2023 the age 15 limit for hearing aids has been removed. The amendment first appears on the schedule page, appears again in the definition of durable medical equipment, and again in the covered charges provision addressing hearing aids.

The Board is aware that doula services must be covered under Medicaid pursuant to P.L. 2019, c.85. Given the recent focus at State and Federal levels on maternal health outcomes and race disparities and some research showing that doula care is associated with better birth outcomes, including reductions in cesarean section rates, the Board proposes to include doula services, subject to some limits, as an optional covered charge. As an optional covered charge, carriers that have contracts with providers that can perform the services and wish to include the coverage may do so. Amended text appears on the schedule page, in the definition section with a definition of doula, as an amendment to the definition of practitioner, and as a benefit in the maternity care provision. This doula benefit also impacts the definition of covered charges and the Board proposes adding “unless otherwise covered as stated in the Policy” in recognition of the fact that a doula does not satisfy the definition of provider.

The Board proposes to amend the definition of annual open enrollment period to delete references to plans with riders since optional benefit riders are not permitted by the rating requirements of the Affordable Care Act.

The Board proposes to include a new coverage type to allow for children only coverage. To accomplish the new coverage type the Board proposes to amend the definitions of “Covered

Person” and “You” and add a new definition of “Responsible Person.” A type of coverage called “Responsible Person and Children Coverage” is added, and the Who is Eligible section was revised to include Children of the Responsible Person. Additionally, the Adult and Children coverage type was amended to remove the variable text that would have allowed different conditions for children only coverage. The definition of covered person is amended to state a responsible person is not a covered person and the definition of you is amended to state that you could refer to a responsible person.

The Board proposes to expand the triggering events to address moves within New Jersey that result in the person having different plans available. The proposed a new triggering event allows a special enrollment period following such a move.

The Board proposes to add optional coverage for walk-in clinics that are commonly located within some large pharmacies. A definition of walk-in clinic has been added to the definitions section and a benefit provision has been added to the covered charge section. The text is included as optional to allow inclusion by carriers that have arrangements to offer coverage at walk-in clinics.

As required by the Public Health Service Act (PHS Act) as extended or added by the Consolidated Appropriations Act, 2021, a provision entitled “Network Provider Information” is proposed to be added to the standard plan text in the sections addressing PPO, EPO and POS plans types in Exhibit A and to the member Provisions in Exhibit B.

As further required by the PHS Act as extended or added by the Consolidated Appropriations Act, 2021 a provision addressing limitations on the application of cost sharing under stated circumstances are proposed to be included in a new provision entitled “Impact of the

Consolidated Appropriations Act (CAA) on Copayments, Deductible Amounts, and/or Coinsurance, Maximum Out of Pocket Amounts and Balance Billing.”

The Board proposes to include an optional virtual primary care benefit that enhances the typical in-person primary care benefit. The virtual benefit is in addition to and does not replace the typical primary care benefit. The benefit is included as optional to allow carriers that have arrangements to provide virtual primary care to make the benefit available.

The Board proposes to re-name the Pregnancy benefit in Exhibit A to Maternity Care to more accurately name the scope of the coverage provided. This newly named provision addresses the optional doula benefits discussed above. The same Maternity Care benefit is proposed to be specifically added to Exhibit B.

The Board proposes to add a provision specifically addressing coverage for abortion care that includes coverage for both medical and surgical abortions. As stated in the November 23, 2022 Report to the Governor and Legislature regarding the Freedom of Reproductive Choice Act, there is a need for a clear regulation to provide for abortion coverage under state-regulated health benefits plans consistent with state policy and the rights promulgated in P.L. 2021, c. 375. The optional exclusion for abortion is proposed to be deleted.

The Board proposes to include optional coverage for gene-based, cellular and other innovative therapies provided by a practitioner or hospital. The coverage would enhance the coverage otherwise available to treat certain medical conditions. The benefit is included as optional to allow carriers that have arrangements to provide therapies to make the benefit available.

The Board proposes to revise the colorectal screening benefit to reduce the age restriction from 50 to 45 to be consistent with the most recent published guidelines of the American Cancer Society.

The Board proposes to revise the vision screening benefit in Exhibit A to extend the limiting age from 17 to age 19 to align the age with the pediatric vision benefit.

The Board proposes to remove Medicare from the scope of the Coordination of Benefits Provision and add a provision addressing the effect of Medicare on individual coverage. This new provision clarifies the secondary status of individual benefits when a person is entitled to Medicare as well as addresses the obligation of the consumer to provide information regarding Medicare eligibility. The Benefits from Other Plans provision cross references the newly added provision.

### **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 the 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 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, 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 expanded coverage for hearing aids will have a positive social impact for those consumers over the age of 15 for whom hearing aids will now be covered supplies. The Board anticipates that the expanded coverage type allowing coverage for children without an adult will have a positive social impact, particularly in instances in which the

responsible adults are covered under plans that do not allow dependent coverage as well as custody situations in which the non-custodial parent is obligated to provide health coverage for children. The IHC Board expects that expansion to the list of triggering events will have a positive social impact in that it will provide the opportunity for a special enrollment period, allowing more people to continue to access geographically aligned coverage. The Board expects that provisions included to address requirements of the Consolidated Appropriations Act will help heighten awareness of the protections under Federal law.

### **Economic Impact**

The IHC Board expects that the expanded benefit for hearing aids will provide a positive economic impact for consumers.

The IHC Board expects that the variable benefits for doula benefits, virtual PCP, walk-in clinics and various therapies will provide a positive economic impact for consumers covered under plans issued by carriers that elect to include the benefits.

The IHC Board does not have information necessary to quantify the economic impact in terms of the amount of benefits carriers will 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, one of the proposed amendments is intended to comply with a Federal requirement included in the Notice of Benefit and Payment Parameters. Other proposed amendments address requirements of the Consolidated Appropriations



Act (CAA) The proposed amendments do not exceed the requirements of the Notice or CAA. 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 et seq. 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.

The IHC Board notes that implementation of the proposed amendments can be achieved using current technology.

### **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:

**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:

New Jersey Individual Health Coverage Program

20 West State Street, 11th Floor

PO Box 325

Trenton, NJ 08625-0325

or

New Jersey Office of Administrative Law

9 Quakerbridge Plaza

PO Box 049

Trenton, NJ 08625-0049