

INSURANCE

NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

Individual Health Coverage Program

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

Proposed: November 1, 2023

Adopted: December 12, 2023, New Jersey Individual Health Coverage Program Board, Sandi Kelly, Chairperson.

Authority: N.J.S.A. 17B:27A-2 et seq.

Filed: _____, 2023 as R. 2023 d. _____ **with non-substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Effective Date: January 1, 2024

Operative Date: April 1, 2024

Expiration Date:

Summary of Hearing Officer’s Recommendation and Agency Responses

The New Jersey Individual Health Coverage Program Board (IHC Board) held a hearing on Tuesday, November 28, 2023 by Zoom to receive testimony with respect to the health benefits plans, set forth in N.J.A.C. 11:20 Appendix Exhibits A and B. Ava Rimal, Regulatory Officer, served as the hearing officer.

The hearing officer made no recommendations regarding the proposed amendments. The hearing record may be reviewed by contacting the New Jersey Individual Health Coverage Program Board, P.O. Box 325, Trenton, NJ 08625-0325.

Summary of Public Comments and Agency Responses

The following is a summary of the comments received from members of the public and the

IHC Board's responses.

The IHC Board took testimony from two members of the public, Kaitlyn Wojtowicz of Planned Parenthood Action Fund of New Jersey and Andrew Sprung of Blue Wave New Jersey and the New Jersey for Healthcare Coalition, at the virtual public meeting held on November 28, 2023. In addition, the Board received one written comment, also from Kaitlyn Wojtowicz of Planned Parenthood Action Fund of New Jersey, which was consistent with her oral testimony.

COMMENT: One commenter expressed strong support of the proposed amendments to the definition of "practitioners" in the standard plan documents as these changes are consistent with recent changes to New Jersey law which allows pharmacists to prescribe contraceptives.

RESPONSE: The Board appreciates the commenter's support.

COMMENT: One commenter expressed strong support of the proposed amendments to the standard plan documents ending the presumption of Medicare eligibility for enrollees over age 65, which effectively prohibits insurers from acting as a secondary payor unless the enrollee is actually enrolled in Medicare or other coverage. The commenter noted that the Department has instructed carriers to retroactively ensure all claims from the start of the 2023 contract period are administered consistent with guidance issued by CMS regarding Benefit Coordination and Medicare Eligibility on May 24, 2023. The commenter applauded the Department's directive, and noted approximately 9,000 enrollees over age 65 obtained health plans through Get Covered New Jersey in 2023. The commenter noted that this figure does not include the enrollees over 65 who obtained IHC plans off-exchange. In addition, the commenter stated that IHC insurers' practice of declining to act as primary payor based on the presumption of Medicare eligibility dates back to 2016. The commenter noted that approximately 45,000 individuals over age 65 have obtained health plans from New Jersey's Affordable Care Act marketplace between 2016 and 2023. The commenter

notes that an unknown number of these enrollees may have been burdened with potentially unlimited medical debt and exposed to medical bills far in excess of statutory out of pocket maximums, therefore, the Department needs to fully investigate and address the damage done to enrollees and possibly providers due to these practices.

RESPONSE: The Board appreciates the commenter's support. The Board notes that the Department responded to the May 24, 2023 CMS guidance as soon as practicable after it was released and requested that the Individual Health Coverage Program Board remove the language in question from the 2024 standard individual health benefits plans, which the Board is now doing in this proposal. The Department instructed that all carriers review the benefits of any individual who is enrolled in a 2023 individual plan and is age 65 or older to ensure that the policyholders are receiving the appropriate coverage, and that all coverage is consistent with the applicable Federal Guidance. This directive to the carriers in the individual market is for the entirety of plan year 2023. The Department has also asked any impacted consumer to contact the Department's consumer hotline at 1-800-446-7467.

Agency Initiated Changes

The IHC Board is not making any agency initiated changes upon adoption.

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 proposal, the proposed amendments comply with the May 24, 2023 CMS guidance regarding Benefit Coordination and Medicare Eligibility and 45 C.F.R. 155.430(b)(3), and do not exceed those Federal standards. Accordingly, a Federal standards analysis is not required.