INSURANCE
DEPARTMENT OF BANKING AND INSURANCE

INDIVIDUAL HEALTH COVERAGE PROGRAM

Changes to the Benefit Levels and Policy Forms to Comply with State and Federal Law

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

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

Authority: N.J.S.A. 17B:27A-2 et seq.; P.L. 2008, c. 126; P.L. 2009, c. 115

Calendar Reference: See Summary below for an explanation of the exception to the calendar requirement

Proposal Number: PRN 2010-

As required by N.J.S.A. 17B:27A-16.1, interested parties may testify with respect to the standard health benefits plans and specimen Basic and Essential plan, set forth in Exhibits A and B of the Appendix to N.J.A.C. 11:20 at a public hearing to be held at 9:00 a.m. on September 15, 2010 at the New Jersey Department of Banking and Insurance, Conference Room 223, 20 West State Street, Trenton, New Jersey.

Submit comments by September 28, 2010 to:

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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). One of the primary functions of the IHC Program and its Board is the creation of standard health

benefits plans (standard plans) to be offered in the individual market in New Jersey. There are five standard plans, which have been established through regulation, 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, which provides explanations of how certain variables in the standard plans may be used by carriers.

From time to time, the IHC Board finds it necessary or appropriate to revise the standard plans. Since the IHC Board's last modifications to the IHC standard plans and forms in 2008, a number of additional State and Federal laws have been enacted that have an impact upon the standard plans. These include:

1) P.L. 2008, c. 126, usually referred to as Grace's Law, which requires coverage of hearing aids for hearing-impaired children under age 15;

2) P.L. 2009, c. 115, sometimes referred to as the Autism Mandate, which requires: that physical therapy, speech therapy and occupational therapy be covered for the treatment of autism and other developmental disabilities to the same extent as such therapies are covered for other conditions; that applied behavior analysis (ABA) be covered for treatment of autism up to age 21, subject to an annual dollar limit; and, that insurance provide a benefit for the Family Cost Share for certain therapies provided to children through New Jersey's Early Intervention System;

3) The Patient Protection and Affordable Care Act, Public Law 111-148 (PPACA), which, among other things, requires: that no preexisting condition limitation period apply to children up to the age of 19; and, extension of the age for covering child dependents up to age 26 without consideration of any conditions related to economic, educational or marital status of the child dependent; and

4) Adopted amendments and new rules to N.J.A.C. 11:22-5, the Department of Banking and Insurance's (DOBI) Minimum Standards for Health Benefits Plans, Prescription Drug Plans and Dental Plans (Minimum Standards), which, among other things, prohibits the application of network coinsurance and copayments to the same service.

The proposed amendments to Exhibits A and B are intended to bring the standard plans into compliance with these newest laws. The standard plans must comply with Grace's Law, the Autism Mandate, PPACA and Minimum Standards. In addition, the IHC Board is proposing an amendment to Exhibits A and B to bring them into compliance with N.J.A.C. 11:22-6.3, regarding war exclusions in health coverage. N.J.A.C. 11:22-6.3, which is also a part of the DOBI Minimum Standards, is not new, but the IHC Board inadvertently neglected to include the amendment in prior proposals.

The IHC Board is proposing the following specific amendments:

As required by P.L. 2008, c. 126, Plans A/50, B, C, D and HMO are being amended to include coverage for hearing aids for children under age 15 with a maximum benefit or $1,000 for each 24 month period. The amendments appear on the schedule page text, the covered charges and covered services and supplies text as well as the exclusions.

As required by P.L. 2009, c. 115, Plans A/50, B, C, D and HMO are being amended to include the therapy services required by the Autism mandate which are separate from the therapy benefits available for other sickness. The definition of developmental disability is being amended consistent with the definition recommended in the DOBI's Bulletin 10-02. The definition of practitioner is being expanded to include providers of ABA, specifically those recognized by the national Behavior Analyst Certification Board. The amendments appear on

the schedule page text, the covered charges and covered services and supplies text as well as the exclusions.

As required by N.J.A.C. 11:22-6.3 the war exclusion in Plans A/50, B, C, D and HMO is amended to use the specific terminology used in the regulation.

As required by N.J.A.C. 11:22-5 the separate hospital confinement copayment in Plan B is being deleted. The separate covered charges text for Plan B is being deleted as the covered charge text for Plans A/50, C and D will also apply to Plan B.

As required by PPACA, Plans A/50, B, C, D and HMO are being amended to specify that there is no cost sharing for preventive care, whether copayment, coinsurance or deductible. The amendments appear in the schedule text as well as the preventive care benefit provision.

As required by PPACA, Plans A/50, B, C, D and HMO are being amended to define a dependent as a child up to age 26.

As required by PPACA, Plans A/50, B, C, D and HMO are being amended to limit to application of the pre-existing conditions exclusion to persons age 19 or older. The amendments appear in the definitions of pre-existing condition and pre-existing condition limitation and in the pre-existing conditions limitations provision.

The Board proposes an amendment to the “handicapped child” provision to specify that the child must be and remain unmarried for the extension to apply. Since a child under age 26 may actually be married, it is important to note that for purposes of the extension, marriage would be a disqualification.

The Board proposes replacing the phrase “non-specialist physician visit” as used in the orthotic and Prosthetic Appliance provision with “physician visit to a non-specialist Doctor or PCP visit as the Board believes the new text will be more readily understood.

The Board proposes amendments to defined terms used throughout the standard plans such that defined terms are used consistently. For example, the term Covered person is used in Exhibit A while member is used in Exhibit B.

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 which will be submitted to OAL for publication in the *New Jersey Register*.

Social Impact

The IHC Board anticipates a positive social impact as a result of the proposed amendments. Bringing the standard plan forms into compliance with multiple State as well as Federal laws will make it easier for individuals to understand their benefits, and assure greater carrier consistency in administration of the benefits. With respect to the Autism Mandate and Grace's Law, standard plans issued after the effective date of the laws must be in compliance immediately, while existing policies are required to come into compliance with the laws upon each plan's anniversary. In effect, all standard plans should be in compliance with Grace's Law now, and many standard plans should already be in compliance with the Autism Mandate. Although compliance with Grace's law is relatively straightforward, compliance with the Autism Mandate is somewhat complex. The DOBI issued guidance in February to help carriers administer the new mandate. These proposed amendments follow the DOBI guidance set forth in Bulletin 10-02, providing specific language that carriers should incorporate.

Carriers are required to comply with PPACA and DOBI's Minimum Standards and new rules at N.J.A.C. 11:22-5 beginning September 23rd and September 9th, respectively. Compliance with both PPACA and DOBI's new rules is somewhat complex, in part because of interaction with multiple provisions of the standard plans and other State laws. These proposed

amendments will provide guidance for carriers in administering the standard plans and help assure that consumers receive the benefits to which they are entitled under the terms of the plans and under the law.

Economic Impact

The IHC Board anticipates a moderately adverse economic impact from these proposed amendments. (The IHC Board notes that compliance with Grace's Law, the Autism Mandate, PPACA and Minimum Standards is required whether or not the IHC Board adopts the proposed amendments to the standard plans.) Each of the mandated benefits is expected to result in some increased medical costs for carriers, which will lead to increased premiums for consumers, although the specific cost of each new benefit may be relatively modest. When the Mandated Health Benefits Advisory Commission (MHBAC) reviewed legislation similar to, although not necessarily the same as, Grace's Law and the Autism Mandate, the MHBAC had expected premiums to increase from .07% to 1% for Grace's Law and from .4% to .8% for an Autism Mandate (but note: the autism-related bill reviewed by the MHBAC did not include therapy benefits for other developmental disabilities or an Early Intervention Family Cost Share benefit). Carriers have generally estimated that extension of the child dependent age to 26 pursuant to PPACA will be relatively nominal, although most such estimates appear to relate to group coverage, not individual coverage. The impact of changes in cost-sharing and benefit designs required by PPACA and the Minimum Standards is unpredictable, although there is an expectation that cost increases are inevitable with respect to the elimination of cost-sharing (deductibles, copayments and coinsurance) for preventive benefits. However, the impact upon New Jersey's standard plans may be very modest in this regard because New Jersey's standard

plans already provided preventive services without application of deductible and coinsurance (subject to annual caps).

On the other hand, there are some significant additional benefits for consumers. Although some benefits are targeted to relatively discrete populations – children up to 15 years old who are hearing-impaired, children diagnosed with a developmental disability and receiving specific therapies – everyone covered under an individual standard plan will have the opportunity to use the proposed changes (expansions) in benefits for preventive care services. It is often argued that better utilization of preventive care services will result in reduced utilization of more intensive and costly treatments for conditions that are avoidable or subject to mitigation through preventive actions. Whether reductions in some health care costs will balance out increases in other health care costs is uncertain.

The IHC Board does not expect carriers will need to avail themselves of any professional services beyond those they already utilize as part of their daily operations in order to successfully comply with these proposed amendments. The IHC Board does not expect any specific impact upon its own administrative expenses related to these proposed amendments.

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. These proposed amendments are subject to Federal requirements addressing certain benefits and terms of health insurance contracts in PPACA. Although the IHC Board is not actively seeking to exceed the Federal requirements, arguably, the State standards may do so. The Federal PPACA requires that coverage for child dependents be extended up to age 26, based solely on the relationship of the child to the policyholder. Currently, the standard plans limit

coverage to age 18 or age 23 if the child continues to be a full-time student and is unmarried. The IHC Board is proposing to amend the standard plans to change the age of an eligible child to 26, and to remove the requirement for full-time student status and other conditions not applicable to children younger than 19 years old. These changes will bring the standard plans into compliance with PPACA. It may be noted, however, that New Jersey recognizes civil union partnerships and domestic partnerships, and by law must treat civil union partners and domestic partners the same as married spouses for insurance purposes. Accordingly, the children who must be covered until age 26 – including children of a policyholder's civil union partner or domestic partner – may be somewhat broader in New Jersey than may be required by the Federal law. The Federal law does not preempt more generous State laws in this instance. Thus, the proposed amendment is necessary to assure compliance with both the State and Federal law.

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 proposal.

Agricultural 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 does not believe the proposed amendments apply to "small businesses," as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but acknowledges the possibility that one or more carriers might meet that definition. 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. The economic impact on carriers that may be small businesses is described in the Economic Impact set forth above. As noted, the IHC Board acknowledges that there may be some adverse economic impact on the carrier, but that the carrier is likely to pass additional incurred costs on to policyholders through increased premiums. Alternatively, the carrier may seek to control certain costs using techniques at its disposal, including enhanced education, utilization management and provider negotiations. No differentiation in compliance requirements is provided based on business size. The requirements of and the goals to be achieved by the various State and Federal laws in question do not vary based on 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.

Smart Growth Impact

The IHC Board does not believe these proposed amendment will have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The IHC Board does not believe the proposed amendments will have an impact on housing affordability in this State in that 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

The IHC Board does not believe the proposed amendments will have an impact on the number of housing units or the availability of affordable housing in the State, or that the proposal will have an affect 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.

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