

INSURANCE

NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD

Small Employer Health Benefits Program

Crediting Medicaid and NJ FamilyCare in Determining Percentage of Employee Participation; Federal Health Coverage Portability Amendments

Proposed Amendments: N.J.A.C. 11:21-1.2, 7.2 and 7.5 and 11:21 Appendix Exhibits A, F, G, V, W, Y, HH and II.

Authorized By: New Jersey Small Employer Health Benefits Program Board, Wardell Sanders, Executive Director

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

Calendar Reference: See Summary below for explanation of exception to calendar requirements

Proposal number: PRN2005-463

Interested persons may testify with respect to the standard health benefits plans, set forth in Appendix Exhibits A, F, G, V, W, Y, HH and II to N.J.A.C. 11:21 at a public hearing to be held on Wednesday, January 18, 2006 at 9:00 A.M. at the New Jersey Department of Banking and Insurance, Room 218, 20 West State Street, Trenton, New Jersey.

Submit comments by February 17, 2006 to:

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The agency proposal follows:

Summary

The SEH Program Board was charged by the Legislature with implementing and regulating the reformed small employer health benefits coverage market pursuant to P.L. 1992, c. 162 as amended, and codified at N.J.S.A. 17B:27A-17 et seq. (the "SEH Act").

P.L. 2005, c. 166, signed by Acting Governor Codey on August 5, 2005, and effective the 60th day after enactment, requires that Medicaid and NJ FamilyCare be credited in determining the percentage of employee participation. The “Participation Requirements” provision in N.J.A.C. 11:21 Appendix Exhibits A, F, Y and HH is being amended to include coverage under Medicaid and NJ FamilyCare. The “Term of the Policy-Renewal Privilege-Termination” provision set forth in Appendix Exhibits A and F and the “Term of the Contract-Renewal Privilege – Termination” provision set forth in Appendix Exhibits G and HH are being amended to include coverage under Medicaid and NJ FamilyCare. N.J.A.C. 11:21-7.5(a), which addresses the application of the participation requirement and identifies the coverages that are considered for purposes of satisfying the participation requirement, is being amended to include Medicaid and NJ FamilyCare as a new paragraph (a)3.

Final Federal regulations for health coverage portability were published in the December 30, 2004 *Federal Register* and apply to plan years beginning on or after July 1, 2005. The rules are codified at 26 CFR Parts 54 and 602, 29 CFR Part 2590 and 45 CFR Parts 144 and 146. Nondiscrimination in health coverage in the group market rules were published in the January 8, 2001 *Federal Register*. Those rules are codified at 26 CFR Part 54, 29 CFR Part 2590 and 45 CFR Part 146. The standard plans must be amended to be in complete compliance with these new Federal rules. For the purpose of references to the Federal rules in the proposed amendments discussed below, the Department of Labor citations from 29 CFR Part 2590 will be included. In addition, since the majority of the amendments being proposed are amendments to the standard plans, the order in which the amendments will be discussed will coincide with the order in which they appear in Appendix Exhibit F which is the standard group policy form for Plans B, C, D and E. To the extent the amendment being made to the policy form also affects a

section in the rules, such amendment will be discussed along with the corresponding amendment to the policy form.

As required by 29 CFR 2590.701-4(a)(xi) the definition of “Creditable Coverage” found in the Definitions section of Appendix Exhibits A, F, G, V, W, Y, HH and II is being amended to include Title XXI of the Social Security Act (State Children’s Health Insurance Program). The definition of “Creditable Coverage” that appears in N.J.A.C. 11:21-1.2 and 7.2 is likewise being amended to include Title XXI of the Social Security Act (State Children’s Health Insurance Program).

As required by 29 CFR 2590.701-3(a)(3)(i), the definition of “Enrollment Date” found in the Definitions section of Appendix Exhibits A, F, G, V, W, Y, HH and II is being amended to explain that if the employer transfers coverage to another carrier, the person’s enrollment date does not change. The definition of “Enrollment Date” that appears in N.J.A.C. 11:21-1.2 and 7.2 is likewise being amended to explain that if the employer transfers coverage to another carrier, the person’s enrollment date does not change.

To comply with 29 CFR 2590.701-3(a)(1), which addresses limitation on preexisting conditions, the Definition of “Per Lifetime” found in the Definitions section of Appendix Exhibits A, F, V, W, HH and II is being deleted. The application of a per lifetime limitation which considered coverage under any other policy would have resulted in a limitation based on coverage for a condition that existed before the effective date of coverage under the policy. Although the standard policy forms defined the term Per Lifetime, no benefits set forth in the standard policy forms were subject to a Per Lifetime limitation.

29 CFR 2590.701-4(a)(ix) sets forth of definition of “Public Health Plan,” which is a term used in the definition of “Creditable Coverage.” “Public Health Plan” as defined includes

plans established or maintained by a foreign country or a political subdivision of a foreign country, and is thus broader than was previously understood. To ensure that the term is properly understood, “Public Health Plan” is being added as a new defined term to the definitions section of Appendix Exhibits A, F, G, V, W, Y, HH and II. In addition, the definitions set forth at N.J.A.C. 11:21-1.2 and 7.2 are being amended to include a definition of “public health plan.”

29 CFR 2590.701-3(a)(3)(iii) addresses waiting periods. 29 CFR 2590.702(b) prohibits discrimination based on a health factor in rules for eligibility which are defined as inclusive of waiting periods. As a result, the Board proposes to amend the “Waiting Period” provision in Appendix Exhibits A, F, Y and HH to state that any lapse in service during the waiting period due to a health status-related factor will not require that a new period of service begin anew, however, the time served in the waiting period will be reduced by the number of days of absence.

As required by 29 CFR 2590.702(e), the “Exception to the Actively at Work Requirement” provision in Appendix Exhibits A, F, G, V, W, Y, HH and II is being amended to state that if coverage under the replacing plan is richer than coverage under the plan being replaced, the replacing plan will coordinate benefits as the secondary payor with the plan being replaced.

As required by 29 CFR 2590 701-6(b)(3)(iii)(B), the “When Dependent Coverage Starts” provision in Appendix Exhibits A, F, G, V, W, Y, HH and II is being amended to specifically address the effective date of coverage for a child being placed for adoption as being the later of the date the employee notifies the carrier and makes payment or the dependent’s eligibility date.

As required by 29 CFR 2590 701-3(a), the “Dental Care and Treatment “ provision in Appendix Exhibits F, G, W, Y, HH and II is being amended to delete the requirement that the injury for which dental treatment is sought must have occurred while the person was insured.

The provision continues to stipulate that the treatment must be finished within six months of the date of the injury.

As required by 29 CFR 2590.702(b)(2)(iii), the exclusion addressing engaging or trying to engage in an illegal occupation in the “Exclusions” section of Appendix Exhibits A, F, G, V, W, Y, HH and II is being amended to include an exception to the exclusion for injuries that result from an act of domestic violence or that result from a medical condition.

The Board recognizes that carriers reissued the standard plans as required by the amendments that were operative on October 1, 2004 and the Board is sensitive to the tremendous burden associated with the reissue of all plans. Therefore, the Board will not require carriers to reissue all plans upon adoption of the amendments included in this proposal. The Board will allow carriers to use the Compliance and Variability Rider, set forth at N.J.A.C. 11:21 Appendix Exhibit DD as the means to communicate the amendments to inforce and new groups. If a carrier prefers to reissue the plans in their entirety, such an approach would be permissible.

The Board's rule proposal provides for a comment period of 60 days, and therefore, pursuant to N.J.A.C.1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendments to N.J.A.C. 11:21-7.5 and the standard plans to provide participation satisfaction credit for employees covered under Medicaid and NJ FamilyCare, as required by P.L. 2005, c.166, will have a positive impact on small employers with employees participating in those programs as the change will make it easier for them to meet the minimum participation requirement in order to obtain coverage. This amendment will be especially

significant for smaller sized groups, since the impact of participation credit for each employee becomes more significant.

The proposed amendments to the standard health benefit plans and the corresponding sections of N.J.A.C. 11:21 will continue to have a favorable impact on New Jersey small employers and their employees as they strengthen the protections for consumers with respect to the application of pre-existing condition standards. .

The proposed amendment to the definition of “Creditable Coverage” to include State Children’s Health Insurance Program coverage, and the inclusion of the definition of a “Public Health Plan” will expand the eligible coverages for which a person may receive credit for pre-existing conditions enabling persons to secure benefits under a small employer plan prior to the expiration of a pre-existing conditions exclusion period.

The proposed amendment to the standard plans to amend the “Waiting Period” provision to address what happens if there is a break in service during the waiting period will have a positive impact on an employee who previously would have been required to begin the waiting period anew following a break in coverage.

The proposed amendment to the “Exception to the Actively at Work” provision to provide for liability of a succeeding carrier in the event of a group replacement when the succeeding carrier’s plan is richer than the prior carrier’s plan will have a positive impact on employees who are disabled as of the date of a group transfer to the extent that the succeeding carrier’s plan is richer than the prior carrier’s plan.

The proposed amendment to the “Dental Care and Treatment” provision will have a positive impact on employees since it allows coverage for dental injuries that may have occurred prior to the date the person was covered.

The proposed amendment to the “illegal occupation” exclusion will have a positive impact on covered persons because the amendment would require coverage for certain injuries that may otherwise have been excluded.

Economic Impact

The proposed amendments will continue to have a substantial economic impact on carriers offering small employer health benefits plans in this State. Member carriers will continue to be required to bear the costs associated with complying with the requirements of these amendments. These carrier costs will include costs associated with training appropriate personnel in the amendments relating to the SEH Program, and developing and disseminating promotional or marketing materials that conforms to the law. All of these costs, however, are attendant to the continued implementation of the comprehensive reforms of the Small Employer Health Benefits Act, and are far outweighed by the long-term benefits to small employers and their employees covered by one of the standard SEH plans.

Carriers will be economically affected by the proposed amendments to the standard policy forms set forth in the Appendix Exhibits for the standard policy forms. Carriers will be required to either use these new forms for new issues and renewals or issue a rider to include the amendments.

The amendment to include Medicaid and NJ Family Care in the determination of whether an employer satisfies participation requirements will have a positive economic impact on employers who might otherwise not have qualified for group coverage.

Employees and their dependents who are covered under the small employer plans will be positively impacted by the various amendments as required by Federal Law since they all would make coverage available in instances where it may otherwise not have been provided.

Insurance producers may be modestly affected by the proposed amendments. They will be required to learn and understand the changes in the law and the changes in the standard contracts in order to serve their clients.

Federal Standards Statement

The proposed amendments comply with 29 CFR 2590. The rules do not expand upon the requirements set forth in these Federal laws. There are no other Federal laws that apply to these amendments.

Jobs Impact

The Board does not anticipate the creation or loss of any jobs as a result of the proposed amendments.

Agriculture Industry Impact

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

Regulatory Flexibility Analysis

The Board believes that all carriers subject to these amendments have in excess of 100 employees or are located outside of the State of New Jersey. Therefore, a regulatory flexibility analysis is not required. However, to the extent that any carrier might be considered a small business under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the following analysis would apply.

All carriers to whom these amendments apply are required to bear any costs associated with complying with the requirements of the rules. The requirements and costs are discussed under the Summary and Economic Impact above. To the extent that these rules apply to small

businesses, they may have a greater impact in that small businesses may be required to devote proportionately more staff and financial resources to achieve compliance. The Board believes, however, that any additional costs would not pose an undue burden because the information required is readily available to carriers.

The Small Employer Health Benefits Act provides no different compliance requirements based on business size. The rules at N.J.A.C. 11:21 establish procedures and standards for carriers to meet their obligations pursuant to the Act, and the fair, reasonable and equitable administration of the SEH Program pursuant to N.J.S.A. 17B:27A-17 et seq. All of the required changes to a carrier's business fall within the normal functions a carrier performs in complying with any State insurance law or regulations. An exemption from the policy form changes for certain carriers that are small businesses would be inappropriate because such an exemption would permit the sale of non-conforming forms in an otherwise standardized market. Accordingly, these amendments provide no differentiation in compliance requirements based on business size.

Smart Growth Impact

The proposed amendments have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

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

11:21-1.2 Definitions

Words and terms contained in the Act, when used in this chapter, shall have the meanings as

defined in the Act, unless the context clearly indicates otherwise, or as such words and terms are further defined by this chapter.

...

"Creditable coverage" means, with respect to an individual, coverage of the individual under any of the following: a group health plan; a group or individual health benefits plan; Part A or Part B of Title XVIII of the Federal Social Security Act ([42 U.S.C. §§ 1395 et seq.](#)); Title XIX of the Federal Social Security Act ([42 U.S.C. §§ 1396 et seq.](#)), other than coverage consisting solely of benefits under section 1928 of Title XIX of the Federal Social Security Act ([42 U.S.C. § 1396s](#)); **Title XXI of the Social Security Act (State Children's Health Insurance Program)** ([42 U.S.C. §§ 1397aa through 1397jj](#)), chapter 55 of Title 10, United States Code ([10 U.S.C. §§ 1071 et seq.](#)); a medical care program of the Indian Health Service or of a tribal organization; a state health benefits risk pool; a health plan offered under chapter 89 of Title 5, United States Code ([5 U.S.C. §§ 8901 et seq.](#)); a public health plan as defined by Federal regulation; a health benefits plan under section 5(e) of the "Peace Corps Act" ([22 U.S.C. § 2504\(e\)](#)); or coverage under any other type of plan as set forth by the Commissioner by regulation. Creditable coverage shall not include coverage consisting solely of the following: coverage only for accident or disability income insurance, or any combination thereof; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability insurance; workers' compensation or similar insurance; automobile medical payment insurance; credit only insurance; coverage for on-site medical clinics; coverage, as specified in [**federal**] **Federal** regulation, under which benefits for medical care are secondary or

incidental to the insurance benefits; and other coverage expressly excluded from the definition of health benefits plan.

...

"Enrollment date" means, with respect to a person covered under a health benefits plan, the date of enrollment of the person in the health benefits plan or, if earlier, the first day of the waiting period for such enrollment. **If an employee changes plans or if the employer transfers coverage to another carrier, the covered person's enrollment date does not change.**

...

"Public health plan" means any plan established or maintained by a state, the U.S. government, a foreign country, or any political subdivision of a state, the U.S. government, or a foreign country that provides health coverage to individuals who are enrolled in the plan.

...

11:21-7.2 Definitions

All words and terms used in this subchapter shall have the meanings as set forth in the Act, [N.J.A.C. 11:21-1.2](#) or as further defined below, unless the context clearly indicates otherwise.

"Creditable coverage" means, with respect to an individual, coverage of the individual under any of the following: a group health plan; a group or individual health benefits plan; Part A or Part B of Title XVIII of the Federal Social Security Act (42 U.S.C. § § 1395 et seq.); Title XIX of the Federal Social Security Act (42 U.S.C. § § 1396 et seq.), other than coverage consisting solely of benefits under section 1928 of Title XIX of the Federal Social Security Act (42 U.S.C. § 1396s); **Title XXI of the Social Security Act (State Children's Health Insurance Program) (42 U.S.C. §§ 1397aa through 1397jj)**, chapter 55 of Title 10, United States Code (10 U.S.C. § 1071 et seq.); a medical care program of the Indian Health Service or of a tribal organization; a state health benefits risk pool; and a health plan offered under chapter 89 of Title 5, United States Code (5 U.S.C. § § 8901 et seq.); a public health plan as defined by Federal regulation; a health benefits plan under section 5(e) of the "Peace Corps Act" (22 U.S.C. § 2504(e)); or coverage under any other type of plan as set forth by the Commissioner by regulation. Creditable coverage shall not include coverage consisting solely of the following: coverage only for accident or disability income insurance, or any combination thereof; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability insurance; workers' compensation or similar insurance; automobile medical payment insurance; credit only insurance; coverage for on-site medical clinics; coverage, as specified in Federal regulation, under which benefits for medical care are secondary or incidental to the insurance benefits; and other coverage expressly excluded from the definition of health benefits plan.

"Enrollment date" means, with respect to a person covered under a health benefits plan, the date of enrollment of the person in the health benefits plan or, if earlier, the first day of the waiting

period for such enrollment. **If an employee changes plans or if the employer transfers coverage to another carrier, the covered person’s enrollment date does not change.**

...

“Public health plan” means any plan established or maintained by a state, the U.S. government, a foreign country, or any political subdivision of a state, the U.S. government, or a foreign country that provides health coverage to individuals who are enrolled in the plan.

...

11:21-7.5 Participation requirements

(a) A small employer carrier shall require a minimum participation under the small employer's health benefits plan of 75 percent of eligible employees who are not serving under a waiting period as permitted under [N.J.A.C. 11:21- 7.8\(c\)](#), except as set forth in (b) below. This participation requirement shall be applied by the small employer carrier uniformly among all health benefits plans and all small employers. A carrier shall count as covered under the small employer's health benefits plan, for the purpose of satisfying employee participation requirements, an eligible employee who:

1. – 2. (No change.)

3. Is covered under Medicaid or NJ FamilyCare;

Recodify existing 3. and 4. as 4. and 5. (No change in text.).

(b) – (d) (No change in text.)

Date

Wardell Sanders, Executive Director