

**INSURANCE**

**DEPARTMENT OF BANKING AND INSURANCE**

**SMALL EMPLOYER HEALTH BENEFITS PROGRAM**

**Small Employer Health Benefit Plans**

**Proposed Amendments: N.J.A.C. 11:21 Appendix Exhibits F, G, K, W, Y, HH, and II**

Authorized By: New Jersey Small Employer Health Benefits Program Board of Directors (Ellen DeRosa, Executive Director).

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

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

Proposal Number: PRN 2015- .

As required by N.J.S.A. 17B:27A-51, interested parties may testify with respect to the standard health benefits plans, set forth in N.J.A.C. 11:21 Appendix Exhibits F, G, W, Y, HH, and II at a **public hearing** to be held April 8, 2015 at 9:00 A.M. in the New Jersey Department of Banking and Insurance, 11th floor Conference Room, 20 West State Street, Trenton, New Jersey.

Submit written comments by April 15, 2015 to:

Ellen DeRosa, Executive Director

Small Employer Health Benefits Program

NJ Department of Banking and Insurance

20 West State Street

P.O. Box 325

Trenton, NJ 08625-0325

Fax: 609-633-2030

E-mail: [ellen.derosa@dobi.state.nj.us](mailto:ellen.derosa@dobi.state.nj.us)

The agency proposal follows:

### **Summary**

The Small Employer Health Benefits (SEH) Program Board of Directors (Board) establishes the standard health benefits plans (standard plans) that may be offered in the small employer market in New Jersey, pursuant to authority of P.L. 1992, c. 162 (codified at N.J.S.A. 17B:27A-17 et seq.), as subsequently amended and supplemented. The SEH Program Board has set forth the requirements with which carriers must comply in offering standard plans in rules at N.J.A.C. 11:21, and has set forth standard plan language for policies, contracts, certificates, and evidences of coverage in the Appendix to N.J.A.C. 11:21. Specifically, the language for the policy forms for the standard plans known as Plans B, C, D, and E is in Exhibit F of the Appendix, while the language of the certificates is contained in Exhibit W; the language for the contract form for the HMO Plan is in Exhibit G, and the language for the HMO evidence of coverage is in Exhibit Y; and the language for the HMO-POS Plan contract form is in Exhibit HH, while the language for the HMO-POS evidence of coverage is in Exhibit II.

The following proposed amendments generally apply to each of the standard plans set forth in Exhibits F, G, W, Y, HH, and II.

The SEH Program Board proposes expanding the variable text on the schedule pages and the benefits provisions to accommodate the option for plan year accumulation of cost sharing as well as the option for plan year accumulation of benefits. Carriers may choose to use plan year for cost sharing and retain calendar year for benefit limits, or may use plan year for all or

continue to use calendar year for all. The current standard plans allow only calendar year accumulation of cost sharing and benefit limits. The SEH Board understands that some employers have requested a plan year option. For example, if the policy is bought on July 1, the deductible, coinsurance, copayment and maximum out of pocket amounts would run from July 1 through the following June 30 and provide a full year for the amounts to accumulate toward the maximum out of pocket.

The SEH Program Board proposes an amendment to the Exclusions provision in Plans B - E and to the Non-Covered Services and Supplies provision in the HMO and to the Non-Covered Services and Supplies and Non-Covered Charges provision in HMO-POS plans to add variable exclusion text for services as addressed by Federal law in Section 1303 of the Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act, Public Law 111-152 (collectively, PPACA). Carriers issuing small employer health benefits plans have the option to include or exclude the variable exclusion text in one or more of the plans the carriers make available. The SEH Board realizes that while there are currently no carriers issuing Multi-State Plans as established by Section 1334 of PPACA in New Jersey, one or more Multi-State Plans are required by the Federal law to be introduced at some later date. The optional exclusion text will facilitate compliance with the Federal requirements associated with Multi-State Plans.

### **SEH Rulemaking Procedures**

The SEH Board is proposing these amendments in accordance with the special action process established at N.J.S.A. 17B:27A-51, 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-51, the SEH Board may

expedite adoption of certain actions, including modification of the SEH Program's health benefits plans and policy forms, if the SEH Board provides interested parties a minimum 20-day period during which to comment on the Board's intended action following notice of it in three newspapers of general circulation, with instructions for obtaining a detailed description of the proposed action and the manner for submitting comments to the Board. Concurrently, the SEH Board must forward notice of the proposed action to the Office of Administrative Law (OAL) for publication in the New Jersey Register (note, however, that the comment period runs from the date the notice of the proposed action is submitted to the newspapers and OAL, not from the date of publication of the notice in the New Jersey Register.) The SEH Board is also required to send 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 SEH Board must allow for testimony to be presented at a public hearing prior to adopting any such modifications. The date, time, and place of the public hearing for these specific proposed amendments is presented at the beginning of this notice.

Subsequently, the SEH Board may adopt its proposed action immediately upon the close of the comment period or the public hearing (whichever occurs 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. The Board need not respond to commenters as part of the notice of adoption, but if the Board does not, the Board will respond to (timely submitted) comments shortly thereafter in a separately-prepared report which will be submitted to OAL for publication in the New Jersey Register.

Because expedited actions adopted by the Board pursuant to N.J.S.A. 17B:27A-51 are accomplished notwithstanding the provisions of the Administrative Procedure Act, the quarterly

calendar requirement established by the Administrative Procedure Act (as amended) and 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 the unique provisions of N.J.S.A. 17B:27A-51 may result in the publication of this rule proposal in the New Jersey Register after the comment period has concluded.

### **Social Impact**

The SEH Board recognizes that social impact of the proposed amendment to include a new variable exclusion is dependent on the election carriers make with respect to use of the variable exclusion. To the extent a carrier does not elect to include the optional exclusion in any of the plans the carrier offers, the coverage will remain the same as it has been in the past and the social impact to small employers buying plans from such carrier will be unchanged. To the extent a carrier elects to include the optional exclusion in one or more plans, small employers who wish to buy a plan containing the exclusion will have the opportunity to buy such a plan which would have a positive social impact for such small employers.

### **Economic Impact**

The SEH Board recognizes that economic impact of the proposed amendment to include a new variable exclusion is dependent on the election carriers make with respect to use of the variable exclusion. To the extent a carrier does not elect to include the optional exclusion in any of the plans the carrier offers, the coverage will remain the same and the economic impact to small employers buying plans from such carrier will be unchanged. To the extent a carrier elects to include the optional exclusion in one or more plans, small employers who wish to buy a plan containing the exclusion will have a modest economic impact since the small employer would not be charged premium for the excluded services.

### **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 standards for health insurance contracts in PPACA and specifically the special rules relating to coverage of certain services at Section 1303. IHC Board does not believe the proposed amendments exceed the Federal standards. Consequently, the SEH Board does not believe a Federal standards analysis is required.

### **Jobs Impact**

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

### **Regulatory Flexibility Analysis**

The SEH 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.

No differentiation in compliance requirements is provided based on business size. The requirements of and the goals to be achieved by the State law in question does not vary based on

business size of a carrier, and the SEH Board would not be at liberty to make such a distinction even if the SEH Board were to consider such a distinction warranted. Accordingly, the proposed amendments provide no differentiation in compliance requirements based on business size. Compliance costs are discussed in the Economic Impact above. No additional professional services would have to be employed in order to comply with the proposed amendments.

### **Housing Affordability Impact Analysis**

The SEH Board does not believe the proposed amendments will have an impact on housing affordability in this State because the proposed amendments only relate to health coverage plans offered by carriers for purchase in New Jersey, and are not expected to have either a positive or negative economic impact on any industry.

### **Smart Growth Development Impact Analysis**

The SEH Board does not believe the proposed amendments will have an impact on smart growth in this State and further, believes there is an extreme unlikelihood that the proposed amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendments only relate to health coverage plans offered by carriers for purchase in New Jersey, and are not expected to have either a positive or negative social or economic impact on any industry.

**Full text** of the proposal follows:

## **APPENDIX**

**OFFICE OF ADMINISTRATIVE LAW NOTE:** The New Jersey Small Employer Health Benefits Program Board is proposing amendments to N.J.A.C. 11:21 Appendix Exhibits F, G, K,

W, Y, HH, and II. 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 for amendment are not published herein, but may be reviewed by contacting:

New Jersey Small Employer Health Benefits Program

20 West State Street, 10th Floor

PO Box 325

Trenton, NJ 08625-0325

New Jersey Office of Administrative Law

9 Quakerbridge Plaza

PO Box 049

Trenton, NJ 08625-0049