

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, 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 2017- .

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 11, 2017, at 2:00 P.M. in the New Jersey Department of Banking and Insurance, 11th floor Conference Room, 20 West State Street, Trenton, New Jersey.

Submit comments by April 18, 2017 to:

Ellen DeRosa

Executive Director

New Jersey Small Employer Health Benefits Program Board

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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; 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. (In developing their policies/contracts and certificates/evidences of coverage, carriers also refer to Exhibit K, which provides explanations about how carriers may use certain variable language in the standard plans.)

To comply with the requirements of recently enacted P.L. 2017, c. 28 the SEH Board proposes the following amendments:

1. The SEH Board proposes to replace the existing definition of “substance abuse” with “substance use disorder” to align with the term defined in P.L. 2017, c. 28. Throughout the forms the term substance use disorder replaces substance abuse.

2. The Board proposes to expand the definition of Medically Necessary and Appropriate to address the use of the clinical review tool required for the determination of medical necessity with respect to the treatment of substance use disorder.
3. The Board proposes to revise the terms Mental Health Center and Substance Abuse Center to Mental Health Facility and Substance Use Disorder Facility to clarify that they are facilities as that term is defined in the forms.
4. The Board proposes to revise the direction provided in the Appeals Procedure text to specifically note that the procedures must comply with the specific process associated with appeals of substance use disorder and to address the in-plan exception process.
5. The Board proposes the inclusion of additional text in the Mental Illness and Substance Use Disorder provision to highlight the specific benefits and requirements for the treatment of substance use disorder. These specific benefits and requirements apply to the first 180 days of treatment with network providers. All other treatment is subject to the benefits and requirements otherwise specified in the provision.
6. The Board proposes to amend the Utilization Review Features in Plans B, C, D and E to address admissions to treat substance use disorder and the requirements for such admissions. The Board proposes to amend the Utilization Review Features in all plans to explicitly apply to hospital and other facility confinements.

Lastly, the SEH Board is proposing to make several typographical corrections in the forms.

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 anticipates that compliance with P.L. 2017, c. 28 will have a positive social impact for those consumers who will benefit from the ease with which they can access medically necessary and in some instance, life-saving services that are made possible with the significant relaxation of the utilization management protocols. Providers who previously had to spend time requesting coverage for services will similarly experience positive social impact.

Economic Impact

The SEH Board expects the covered persons who require treatment for substance use disorder will find the amended benefits will provide a positive economic impact in that their treatment will not be delayed pending prior approval and thus they can begin covered treatment more immediately. Treatment that might have been denied through prior approval will be covered for the first 28 days.

The Board does not have information to quantify the economic impact in terms of benefits carriers will be required to 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, the proposed amendments are intended to comply with newly enacted State law. The SEH Board acknowledges that benefits for the treatment of substance use disorder are included in the Federal Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), part of Public Law 110-343. The Board further acknowledges that the proposed amendments exceed the Federal requirements set forth in MHPAEA in that the restrictions on the use of utilization management as set forth in P.L. 2017, c. 28 require carriers to provide benefits for the treatment of substance use disorder that exceed the requirement of Federal law. While Federal law would allow the use of utilization management to the same extent as for other illness, taking into consideration the standards for the use of qualitative benefit limits, P.L. 2017, c. 28 does not permit such consideration. To the extent that the SEH Board must propose amendments to the standard policy forms that implement P.L. 2017, c. 28 the proposed amendments are not included in MHPAEA. As explained in the economic impact section above, the Board does not have the data necessary to quantify the economic impact in terms of benefits carriers will be required to pay nor the resulting impact on premiums for coverage and therefore the SEH Board is not in a position to include a cost-benefit analysis. The SEH Board notes that compliance with P.L. 2017, c. 28 and thus implementation of the proposed amendments can be achieved using current technology.

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 notice of proposal.

Agriculture Industry Impact

The SEH Board does not believe 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 Federal 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. 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 in that the proposed amendments and repeals 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 SEH 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 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 and repeals relate to the benefit levels and terms of standard health benefits plans offered in New Jersey.

APPENDIX

OFFICE OF ADMINISTRATIVE LAW NOTE: The New Jersey Small Employer Health Program Board is proposing amendments to N.J.A.C. 11:20 Appendix Exhibits F, G, 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 are not published herein, but may be reviewed by contacting:

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New Jersey Office of Administrative Law

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