

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

SMALL EMPLOYER HEALTH BENEFITS PROGRAM

Small Employer Health Benefits Program

Small Employer Health Benefit Plans

Proposed Amendments: N.J.A.C. 11:21-7.7A and 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 September 12, 2017, at 9:00 a.m. at the New Jersey Department of Banking and Insurance, 11th floor Conference Room, 20 West State Street, Trenton, New Jersey.

Submit comments by September 19, 2017, to:

Ellen DeRosa

Executive Director

New Jersey Small Employer Health Benefits Program Board

PO Box 325

Trenton, NJ 08625-0325

Fax: 609-633-2030

E-mail: ellen.derosa@dobi.nj.gov

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; 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; 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 45 CFR 155.420(d), the SEH Board proposes to amend the definition of Triggering Event as found at N.J.A.C. 11:21-7.7A, and as found in the definitions section of Appendix Exhibits F, G, W, Y, HH, and II, to state that:

1. An ineligibility determination by NJFamilyCare for an applicant's application submitted during the open enrollment period or a special enrollment period is a triggering event.
2. Victims of domestic abuse or spousal abandonment who need to enroll separately from the perpetrator of the abuse or abandonment have a triggering event.
3. Gaining access to plans in New Jersey as a result of a permanent move to New Jersey is a triggering event only if the person had minimum essential coverage for one or more days during the 60 days preceding the permanent move. This triggering event encompasses the separate triggering event addressing moving out of the service area.
4. Erroneous findings of eligibility are expanded to address the potential for a finding to have been made by a carrier.
5. Violations of material provisions may be addressed not just to the marketplace but also to the State regulatory agency.

To comply with the requirements of recently enacted P.L. 2017, c. 117, the SEH Board proposes the following amendments to Appendix Exhibits F, G, W, Y, HH, and II, except as specifically identified below:

1. The SEH Board proposes to replace the existing variable definitions of "Telemedicine," "E-Visit" and "Virtual Visit" with variable definitions of "Telemedicine" and "Telehealth" consistent with the terms defined in P.L. 2017, c. 117.
2. The Board proposes to revise the specimen schedule page text to delete variable text showing cost sharing for E-Visits, Telemedicine and Virtual Visits and include cost sharing for the newly defined terms Telemedicine and Telehealth and to state that the cost sharing cannot exceed the cost sharing for an applicable in-person visit.

3. The Board proposes to remove the variable coverage of Telemedicine, E-Visits and Virtual Visits from the Practitioner's Charges for Non-Surgical Care and Treatment provision and create a separate variable provision to address coverage of Telemedicine and/or Telehealth. (Appendix Exhibits F and W only).
4. The Board proposes to remove coverage of Telemedicine, E-Visits and Virtual Visits from item 1 of the Outpatient Services provision and create a new variable item 25 to address coverage of Telemedicine and/or Telehealth. (Appendix Exhibits G, Y, HH and II only).
5. The Board proposes to revise the telephone consultations exclusion to allow an exception for Telemedicine and/or Telehealth (Appendix Exhibits F and W only).

To comply with the requirements of recently enacted P.L. 2017, c. 176, the SEH Board proposes the following amendments:

2. Refer to "Covered Person" rather than "female Covered Person" in the Primary Care Provider section of the Point of Services Provisions and Exclusive Provider Organization Provisions (Appendix Exhibits F and W only);
3. Amend the Specialist Services definition to delete the reference to females. (Appendix Exhibits G, Y, HH and II only).
4. Amend the Primary Care Provider definition to delete the reference to females. (Appendix Exhibits G, Y, HH and II only).

The SEH Board proposes to amend the specimen schedule pages in Appendix Exhibits F, G, W, Y, HH, and II to include variable text to allow the inclusion of a coinsurance limit for one or more services subject to coinsurance. The coinsurance limit would cap the covered persons' financial exposure associated with coinsurance for the specific service or services.

The SEH Board proposes to add variable brackets to the definition of Allowed Charge in Appendix Exhibits F, W, G and Y to accommodate plans that provide no out-of-network benefits.

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 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 45 CFR 155.420(d) will have mixed impact. The requirement to have had minimum essential coverage for at least one day during the 60 days prior to marriage or a permanent move may result in some persons not having the opportunity for a special enrollment period to enroll under a small employer plan and, thus, they will be uninsured. The addition of a triggering event will allow additional persons to have a special enrollment period to enroll under a small employer plan.

The SEH Board recognizes that the inclusion of variable text to address P.L. 2017, c. 117 will have social impact only to the extent carriers elect to include the variable text. If carriers choose to include coverage for telemedicine and/or telehealth, there would be a positive social impact for New Jersey residents who would enjoy increased access to providers.

The SEH Board anticipates positive social impact from the amendments to comply with P.L. 2017, c. 176 for persons who identify as a certain gender.

Economic Impact

The SEH Board anticipates that compliance with 45 CFR 155.420(d) will have mixed economic impact. The requirement to have had minimum essential coverage for at least one day during the 60 days prior to marriage or a permanent move may result in some persons not having the opportunity for a special enrollment period to enroll under a small employer plan and, thus, they will be uninsured. The addition of a triggering event will allow additional persons to have a special enrollment period to enroll under a small employer plan.

The SEH Board recognizes that the inclusion of variable text to address P.L. 2017, c. 117 will have an economic impact only to the extent carriers elect to include the variable text. If carriers choose to include coverage for telemedicine and/or telehealth, there would be a positive economic impact for New Jersey residents who would have coverage for these services that would not otherwise have been covered.

The SEH Board anticipates positive economic impact from the amendments to comply with P.L. 2017, c. 176 for persons who identify as female since they would have coverage for services that would not otherwise have been covered.

To the extent a carrier elects to use the coinsurance limit provision, the additional provision allowing the inclusion of a coinsurance limit will have a positive economic impact in that it will reduce financial exposure covered persons experience for specified covered services.

Federal Standards Analysis

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, some of the proposed amendments are intended to comply with Federal law, 45 CFR 155.420(d). The proposed amendments do not exceed the requirements of 45 CFR 155.420(d). 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 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 believes the proposed amendments may apply to one or more carriers that are “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. 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 and State laws in question do 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 or evoke a change in the average costs of housing 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 small employers.

Smart Growth Development Impact Analysis

The SEH Board does not believe the proposed amendments will have an impact on smart growth 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 relate to the benefit levels and terms of standard health benefits plans offered in New Jersey.

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

11:21-7.7A Special enrollment period

(a) (No change).

(b) Triggering events are:

1. The date an eligible employee or dependent loses eligibility for minimum essential coverage, including a loss of coverage resulting from the decertification of a qualified health plan by the marketplace. A loss of coverage resulting from nonpayment of premium, fraud or misrepresentation of material fact shall not be a triggering event;

2. The date an eligible employee acquires a dependent or becomes a dependent due to marriage, birth, adoption, placement for adoption, or placement in foster care;

3. The date an eligible employee's enrollment or non-enrollment in a qualified health plan is the result of error, misrepresentation, or inaction by the Federal government **or carrier**;

4. The date an eligible employee or eligible dependent demonstrates to the marketplace **or State regulatory agency** that the qualified health plan in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;

5. The date the eligible employee or dependent gains access to new qualified health plans as a result of a permanent move **provided the employee and/or dependent demonstrates having minimum essential coverage for one or more days during the 60 days preceding the permanent move**;

6. The date NJFamilyCare determines an employee or dependent who submitted an application during the open enrollment period or during a special enrollment period is **ineligible**;

7. The date an employee and/or his or her dependent who are victims of domestic abuse or spousal abandonment need to enroll for coverage apart from the perpetrator of the **abuse or abandonment**; [and]

[6] **8.** The date the eligible employee or dependent loses or gains eligibility under Medicaid or NJFamilyCare[.] **and;**

[7] **9.** The date of a court order that requires coverage for a dependent.

(c) – (e) (No change)

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, 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:

New Jersey Small Employer Health Benefits Program

20 West State Street, 11th Floor

PO Box 325

Trenton, NJ 08625-0325

or

New Jersey Office of Administrative Law

9 Quakerbridge Plaza

PO Box 049

Trenton, NJ 08625-0049