

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 2018-.

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 May 16, 2018 at 11:00 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 May 29, 2018 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, 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.)

The SEH Board proposes the following amendments to the standard plans in Appendix Exhibits F, G, W, Y, HH, and II.

To comply with the requirements of P.L. 2017, c. 361, effective January 16, 2018, the Board proposes amending the duration of newborn coverage from 31 to 60 days.

To comply with the requirements of P.L. 2017.c. 241, effective February 15, 2018, the Board proposes adding a new section to the standard plans to address coverage of contraceptives.

Note that because the mandate requires coverage of devices in addition to drugs the reference to contraceptives in the prescription drugs section was removed.

To comply with the requirements of P.L. 2017, c. 309, effective January 1, 2019, The Board proposes adding a new provision to address the coverage of donated human breast milk. The provision would be included in policies issued or renewed on or after January 1, 2019.

To comply with the requirements of P.L. 2017, c. 305, effective August 1, 2018, the Board proposes adding a new provision to provide coverage for digital tomosynthesis.

To provide text necessary to address the deductible and maximum out of pocket for a tiered plan that is a high deductible health plan the Board proposes adding variable text to the benefit provision.

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. 17:30-3.1 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 the recently enacted mandated benefit laws will have a positive social impact for those consumers who will benefit from the coverage the laws require.

Economic Impact

The SEH Board expects that additional coverage will provide a positive economic impact for consumers. Notably, the expansion of newborn coverage from 31 to 60 days will reduce the financial burden on new parents immediately following the birth of a child, since no premium will be required to cover the child for those 60 days.

The SEH 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 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, the proposed amendments are intended to comply with newly enacted State law. The Board is not proposing these amendments under the authority of, or in order to implement, comply with or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements as set forth at N.J.A.C. 1:30-5.1(c)4. Accordingly, no Federal Standards Analysis is required.

The SEH Board notes that compliance with the new mandates, 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 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 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 individuals.

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.

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