

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

SMALL EMPLOYER HEALTH BENEFITS PROGRAM

Small Employer Health Benefit Plans

Adopted 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.

Proposed: March 19, 2021.

Adopted: May 5, 2021.

Filed: _____, 2021 as R. 2021 d. ____ **with non-substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Effective Date: Upon Promulgation.

Operative Date: January 1, 2022.

Expiration Date: October 12, 2023.

Summary of Hearing Officer's Recommendations and Agency Responses

The New Jersey Small Employer Health Benefits Program Board (SEH Board) held a hearing on Tuesday, April 6, 2021 at 10:00 A.M. by teleconference in accordance with P.L. 2020, c. 11 to receive testimony with respect to the proposed amendments to the standard health benefits plans, set forth in Exhibits F, G, W, Y, HH and II of the Appendix to N.J.A.C. 11:21. Ellen DeRosa, Executive Director of the SEH Board, served as hearing officer.

No persons came to the hearing. The hearing officer made no recommendations regarding the proposed amendments. The hearing record may be reviewed by contacting Ellen DeRosa, Executive Director, New Jersey Small Employer Health Benefits Program Board, P.O. Box 325, Trenton, NJ 08625-0325.

Summary of Public Comments and Agency Responses

The SEH Board accepted comments on the proposal through April 12, 2021 and received one comment from one commenter, the New Jersey Association of Health Plans.

COMMENT: The Commenter noted that to comply with the requirements of P.L. 2019, c. 361 the Board proposed amending the contraceptives provision to include language mirroring that of the statute. The Commenter requested confirmation that carriers can exclude certain contraceptive drugs, devices or products so long as coverage is provided for a therapeutic class. The Commenter asked if drugs, devices or products that are excluded because of the coverage of a therapeutic equivalent with cost sharing must be covered and if yes, asked that the schedule clarify the coverage.

RESPONSE: The Board interprets the coverage mandated by P.L. 2019, c. 361 as expressly requiring coverage for the requested contraceptive drug, device or product OR for one or more therapeutic equivalents of the requested drug, device or product. Thus, the mandated coverage permits use of a closed formulary where no coverage under the contraceptive benefit is available for those contraceptive drugs, devices or products for which coverage is provided for a therapeutic equivalent. The closed formulary allowed under P.L. 2019, c. 361 is specific to contraceptives covered under this mandate. The Board acknowledges the open formulary requirements of N.J.A.C. 11:22-5.9. Therefore, to the extent a contraceptive drug, device or product is excluded under P.L. 2019, c. 361 because a therapeutic equivalent is covered, coverage of the excluded drug would be afforded under the prescription drugs provision. Since Federal law (42 U.S.C. 300gg-13(a)(4)) requires coverage of preventive care, which includes network contraceptives, without cost sharing, the coverage of the contraceptive under the prescription drug provision would be without cost sharing.

On adoption, the Board is amending the specimen schedule page text to include text carriers may include to make it clear that contraceptives as listed on the schedule refers to those included under the contraceptives provision (i.e. those required to be covered by P.L. 2019, c. 361). The prescription drug section of the schedule is amended to include text carriers may include to address the coverage of contraceptives not covered under the contraceptives provision because a therapeutic equivalent is substituted. Whether covered under the contraceptives provision or under the prescription drug provision, contraceptives are covered with no cost sharing. Additionally, the Prescription Drugs provision is amended to include a phrase that explains that contraceptives not covered under the contraceptives provision are covered under the prescription drugs provision.

The text added on adoption is included as variable text to recognize that a carrier may choose to forego the opportunity to substitute a therapeutic equivalent and include coverage for all

contraceptives under the contraceptives provision. In such a case the text added on adoption is unnecessary and would not be included.

Agency Initiated Changes

The SEH Board is making no agency initiated changes on adoption.

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, none of the proposed amendments are intended to comply with Federal law. Accordingly, a Federal standards analysis is not required.