

## **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 and Y**

Authorized By: New Jersey Small Employer Health Benefits Program Board of Directors  
(Margaret Koller, Chairperson).

Authority: N.J.S.A. 17B:27A-17 to -56

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

Proposal Number: PRN 2024 -.

As required by N.J.S.A. 17B:27A-51, interested parties may testify with respect to the standard health benefits plans, set forth at N.J.A.C. 11:21 Appendix Exhibits F, G, W and Y at a virtual **public hearing** via Zoom to be held on December 9, 2024 at 11 AM. The meeting can be accessed at: <https://www.zoomgov.com/j/1613547251?pwd=RhizTaPa4nQG1Snv3M6pDbIbtGVxlT.1>

Meeting ID: 161 354 7251

Passcode: 144070

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Submit comments by December 16, 2024 to:

New Jersey Small Employer Health Benefits Program Board  
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E-mail: [ihcsehprograms@dobi.nj.gov](mailto:ihcsehprograms@dobi.nj.gov)

The agency proposal follows:

### **Summary**

The Small Employer Health Benefits (SEH) Program Board of Directors (SEH Board or 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 to -56), as subsequently amended and supplemented. The SEH 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 are in Exhibit F of the Appendix, while the language of the certificates is contained at Exhibit W; and the language for the contract form for the HMO Plan is in Exhibit G, while the language for the HMO evidence of coverage is in Exhibit Y. 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 and Y (standard plan documents).

To comply with P.L. 2023, c. 275, which updates coverage for hearing aids to one

hearing aid for each hearing-impaired ear every 24 months and expands coverage to include charges for the cost of treatment related to cochlear implants, the Board proposes amendments to the “Hearing Aids” provision. In addition, the definition of durable medical equipment has been amended to remove references to hearing aids, as all medically necessary services incurred in the purchase of a hearing aid will be subject to the same deductible, coinsurance or copayments as a primary care visit, and are not considered durable medical equipment.

To comply with P.L. 2023, c. 105, which places a flat cap on the out-of-pocket contribution for any covered person prescribed insulin, an epinephrine auto-injector device, or a prescription asthma inhaler across insurance providers and mandates coverage for diabetes self-management education, the Board proposes amendments throughout the standard plan documents. The schedule pages for each standard plan have been amended to clearly state that insulin, prescription asthma inhalers and epinephrine auto-injector devices are not subject to any deductible and to specify that copayments cannot exceed the statutory maximum for insulin, prescription asthma inhalers and epinephrine auto-injector devices. The Board proposes the addition of a “Treatment of Diabetes” provision, which provides coverage for the expenses incurred for certain equipment and supplies for the treatment of diabetes and the expenses incurred for diabetes self-management education. The Board proposes the inclusion of “blood glucose monitors and blood glucose monitors for the legally blind; test strips for glucose monitors and visual reading and urine testing strips; insulin; injection aids; cartridges for the legally blind; syringes; insulin pumps and appurtenances thereto; insulin infusion devices; and oral agents for controlling blood sugar” under the Prescription Drugs provision and under the Non-Prescription Drugs provision. The Board proposes additional language under the Prescription Drugs provision that expressly states that the cost-sharing limitations set forth by Chapter 105 are not applicable to these specified prescriptions

under a high deductible health plan, and that these prescription drugs are subject to the minimum deductible permitted under section 223(c)(2)(A) of the Internal Revenue Code.

The Board is proposing changes throughout the standard plan documents to implement P.L. 2023, c. 194, the “Small Business Health Insurance Affordability Act” (“Act”), which among several items, requires small employer health benefits plans issued pursuant to N.J.S.A. 17B:27A-17 et. seq. to impose no additional limitations on copayments, coinsurance or deductibles beyond those set forth in the 2010 Federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (“ACA”). Prior to the passage of the Act, the standard plan documents referred carriers to N.J.A.C. 11:22-5.5, which provides network copayments for services and prescription drugs. These references are being stricken from the standard plan documents and are being replaced with a reference to the federal actuarial value calculator, which is consistent with the ACA and Bulletin No. 24-08 issued by the New Jersey Department of Banking and Insurance. The Board is proposing amendments to the out-of-pocket maximum provision of the standard plan documents, consistent with the ACA. Chapter 194 also permits carriers offering small employer plans to offer prescription coverage using a closed formulary. In order to permit a carrier to elect whether or not a plan will offer a closed formulary, the Board is proposing the inclusion of a new variable “Covered Drug” provision.

In addition, to ensure that regulations are current, the Board is proposing amendments that remove references to P.L. 2017, c. 117, which pertains to telehealth and telemedicine services in this State and replaces those references with the appropriate statutory citation, N.J.S.A. 45:1-61 to -66. The Board is proposing amendments to the Virtual Primary Care provision, allowing carriers to elect whether a deductible, copayment or coinsurance will be applied to virtual primary care services. The Board is proposing to amend the definition of “inpatient services” to include

a covered person's home when admitted under the Hospital at Home Act, which permits a hospital to provide acute care services to an individual outside of the hospital's licensed facility and within a private residence designated by the individual, consistent with P.L. 2023, c. 163.

### **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 SEH 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 SEH 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 SEH 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 updating the standard plan documents consistent with Chapter 105 will have a positive social impact as the proposed amendments reduce the financial burden for those covered persons managing illnesses, e.g., diabetes, anaphylaxis, asthma, and chronic pulmonary obstructive disease, and ensures that covered persons have the appropriate notice that the prescription drugs, supplies and services needed to treat these conditions are available to them at a predictable cost.

The Board anticipates that updating the standard plan documents to be consistent with Chapter 275, which provides coverage for hearing aids and cochlear implants, will have a positive social impact on those covered persons who suffer from varying degrees of hearing loss, which

can range from mild to profound. Providing coverage for one hearing aid for each hearing-impaired ear every 24 months will ensure that covered persons who need hearing aids have access to the latest technology when treating hearing loss while providing coverage for cochlear implants and related costs will provide treatment options for those covered persons experiencing sensorineural hearing loss. The updated standard plan documents will provide appropriate notice to covered persons of the benefits available to them.

The Board anticipates that updating the standard plan documents is consistent with Chapter 194, which requires that small employer health benefits plans issued pursuant to N.J.S.A. 17B:27A-17 et. seq. impose no additional limitations on copayments, coinsurance, or deductibles beyond those set forth in the ACA, will result in making health insurance plans more accessible for small employers, and will provide appropriate notice to covered persons of the benefits available to them.

For these reasons, the proposed amendments to the standard plan documents will have a positive social impact on small businesses and on those covered persons by providing appropriate notice of the benefits the laws require and will ensure all carriers are providing the appropriate covered supplies and services at the appropriate cost.

### **Economic Impact**

The SEH Board expects that the proposed amendments will provide a positive economic impact for covered persons.

The SEH Board expects the flat cap on the out-of-pocket contribution for any covered person prescribed insulin, an epinephrine auto-injector device, or a prescription asthma inhaler across insurance providers, and coverage for hearing aids and the cost of cochlear implants and related costs of treatment, will have a positive economic impact on covered persons. The

amendments to the standard plan documents limit out-of-pocket costs for covered persons managing chronic health issues and ensure that the monthly cost of life saving prescription medications remains predictable. Similarly, the amendment to the standard plan documents limits the financial burden of covered persons treating different types of hearing loss.

The SEH Board expects that the changes implementing Chapter 194 will provide a positive economic impact for covered persons, as the law results in making health insurance plans more affordable for small businesses and their employees, and the proposed amendments to the standard plan documents serve to provide covered persons with appropriate notice of the benefits available to them.

The proposed amendments will not incur any additional administrative, enforcement or oversight cost for the SEH Board.

### **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. The proposed amendments to the standard plan documents consistent with Chapters 105 and 275 do not implicate any Federal standards, therefore a Federal standards statement is not required. The proposed amendments to the standard plan documents consistent with Chapter 194 do not exceed Federal standards, but require carriers to meet the Federal standards set forth in the ACA. Accordingly, a Federal standards analysis is not required.

### **Jobs Impact**

The SEH Board does not anticipate that any jobs will be generated or lost as a result of the proposed amendments, as the amendments relate to the terms of standard plan documents issued by carriers offering small employer health insurance plans in this State. 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 as the proposed amendments relate to the terms of standard plan documents issued by carriers offering small employer health insurance plans in this State.

### **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 to -21, 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 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.

The SEH Board notes that compliance with the new mandates, and thus, implementation of the proposed amendments, can be achieved using current technology.

### **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 terms of standard health benefits plans offered in New Jersey.

### **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 terms of standard health benefits plans offered in New Jersey.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The SEH Board has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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

## **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 and Y. 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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