

INSURANCE
NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD
Small Employer Health Benefits Program

Adopted New Rule: N.J.A.C. 11:21 Appendix Exhibit D

Adopted Amendments: N.J.A.C. 11:21 Appendix Exhibits A, F, G, V, W, Y, HH and II.

Proposed: September 5, 2006 (see 38 N.J.R. 3484)

Adopted: September 22, 2006 by the New Jersey Small Employer Health Benefits Program Board, Ellen DeRosa, Executive Director.

Filed: September 22, 2006 as R. 2006 d. _____, with non-substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17B:27A-17 et seq. and P.L. 2005, c. 375

Effective Date: September 22, 2005

Expiration Date: February 19, 2009

Summary of Hearing Officer Recommendations and Agency Responses:

The New Jersey Small Employer Health Benefits (SEH) Program Board held a hearing on Wednesday, August 9, 2006 at 9:30 A.M. at the Department of Banking and Insurance, Room 219, 20 West State Street, Trenton, New Jersey to receive testimony with respect to the proposed amendments to the standard health benefits plan set forth in N.J.A.C. 11:21 as Appendix Exhibits A, F, G, V, W, Y, HH and II and proposed new Exhibit D. Ellen DeRosa, Executive Director of the SEH Program Board, served as hearing officer. No testimony was provided during the hearing. The hearing officer made no recommendations regarding the proposed amendments to the standard health benefits plan set forth in N.J.A.C. 11:21 as Appendix Exhibits A, F, G, V, W, Y, HH and

II or to the new rule set forth in N.J.A.C. 11:21 as Appendix Exhibit D. 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:

Written comments to the published rule proposal were received from the following carrier: Horizon Blue Cross Blue Shield of New Jersey.

COMMENT 1: The Commenter suggested that the sixth paragraph of the Coordination Among Continuation Rights Sections provisions set forth in Appendix Exhibits A, F, G, V, W, Y, HH and II should be amended to state that COBRA and NJ State Continuation coverage do not run concurrently with New Jersey Continuation Rights for Over-Age Dependents (NJCROD). The Commenter noted that a dependent may elect NJCROD in lieu of COBRA to take advantage of a lower premium and that according to the text in the fourth paragraph, the dependent does not have a right to elect COBRA when NJCROD ends.

RESPONSE: The Commenter correctly noted that a dependent may not make a COBRA election following termination of NJCROD and that NJCROD would not run concurrently with another continuation period. The conditions for electing NJCROD are clear from the fourth paragraph, as the Commenter noted, and are further addressed in the first paragraph of the NJCROD provision. To correct any inconsistency, the SEH Program Board is amending the sixth paragraph of the Coordination Among Continuation Rights section upon adoption to include the phrase “other than NJCROD” between “any

other continuation” and “the continuations.” This amendment will clarify that a NJCROD election does not run concurrently with a COBRA or a New Jersey Group Continuation Right election.

COMMENT 2: The Commenter noted the NJCROD provision specifies the dependent limiting age as 19 or 23. The Commenter noted that these ages would be appropriate for a dependent aging out of a small employer plan, but not for a dependent who may have aged out under a prior plan that was a large group plan. The Commenter suggested simply referring to having reached the limiting age, without specifying the actual ages.

RESPONSE: The Commenter raised a valid point. The statute on which this NJCROD provision is based, N.J.S.A. 17B:27A-19.16, does not establish a limiting age and does not limit eligibility to make a NJCROD election to the policy from which age-out occurred. Because a person’s eligibility for an NJCROD election is not contingent on the person having aged out of a small employer plan, and other group health plans may establish a limiting age other than 19 or 23 years old, the references to ages 19 and 23 are inappropriate. Accordingly, the SEH Board is amending the NJCROD provisions upon adoption to replace references the specific limiting ages of 19 or 23 with the “limiting age,” or the “limiting age under the group plan.”

COMMENT 3: The Commenter noted that while item c of the Conditions for Election provision requires that the parent be enrolled for dependent coverage at the time the overage dependent makes an election, item e of the When Continuation Ends provision states that if an employee waives dependent coverage because he or she has no

other dependents, the continuation for the overage dependent will not end. The Commenter suggested that these provisions be consistent.

RESPONSE: The Board thanks the Commenter for noting this inconsistency. The Board intended the language to be such that when the only child of an employee is over-age, it is not incumbent upon the employee to initiate or maintain a parent/child or a family coverage election in order for the over-age child to make the NJCROD election. When an employee has multiple children at least one of whom is under-age, the employee must elect either parent/child or family coverage in order for the over-age child to be eligible for the NJCROD election. However, when there are no longer under-age children eligible for dependent coverage, the employee may elect single coverage without affecting the coverage of any over-age dependent who seeks to make or who has made a NJCROD election. The SEH Board is amending Conditions for Election provision upon adoption to include an exception addressing the opportunity for a NJCROD election when the employee has not made a dependent election because there are no other dependents.

COMMENT 4: The Commenter suggested bracketing the Special Enrollment Period provision to enable carriers to omit it from plans issued after May 11, 2007.

RESPONSE: The Board has made the suggested change upon adoption. The Special Open Enrollment Period for NJCROD for those over-age dependents who aged out prior to May 12, 2006 will end as of May 11, 2007 in accordance with N.J.S.A.17B:27A-19.16. There is no need for a carrier to include language regarding the Special Open Enrollment Period after May 11, 2007 if they prefer not to do so.

COMMENT 5: The Commenter suggested changing “90 days prior to the election” to “90 days prior to the effective date” in the Application of the Pre-Existing Conditions Exclusion provision.

RESPONSE: The SEH Board disagrees with the suggested change. A pre-existing condition is determined based on whether the condition existing before the enrollment date of a person under a small employer plan as set forth at N.J.A.C. 11:21-7.2. Similarly, the timeframe for calculating whether an individual had prior creditable coverage (which may reduce a pre-existing condition limitation period applicable to a person determined to have a pre-existing condition) runs from the date that the person’s prior coverage terminated to the enrollment date. The Board considers the date of election of NJCROD to be the enrollment date for an over-age dependent. The text the Board proposed in the Application of the Pre-Existing Conditions Exclusion provision allows an overage dependent to be uninsured for up to 90 days prior to the date the overage dependent makes an NJCROD election and still be eligible to have his or her prior coverage credited towards the pre-existing conditions limitation provision in the small employer plans (thereby reducing or eliminating the application of the pre-existing condition limitation period for that person). The Board notes that the opportunity to elect coverage exists during the 30-day period from specific events. The Board anticipates that the effective date of coverage will be no more than 30 days from the enrollment date. No change is being made in response to the comment.

COMMENT 6: The Commenter noted that the Over-Age Dependent Rider provides information concerning the application of the deductible and maximum out of

pocket provision and suggested that the NJCROD provision should include details regarding the deductible and maximum out-of-pocket.

RESPONSE: The commenter is essentially suggesting that the policy and certificate forms contain the same information as the rider form. However, it is unnecessary for the forms to be redundant to that level of detail, and such redundancy may even prove to be confusing to some carriers, employers and/or employees. Each carrier determines whether to use the “integrated” or “stand-alone” option for purposes of operationalizing the NJCROD election. That is, once an over-age dependent elects coverage, the carrier’s selection will determine whether he or she will be covered under the same certificate as the parent (the “integrated” option) or issued a separate certificate (the “stand-alone” option). When the carrier selects to operationalize the NJCROD election using the stand-alone option (meaning, among other things, the satisfaction of the deductible and maximum out-of-pocket expenses run separately for the over-age dependent from the satisfaction of the deductible and maximum out-of-pocket expenses for other members of the family), then it is incumbent upon the carrier to assure that all relevant information is made available in writing to the over-age dependent. The information needs to be specifically delivered to the over-age dependent, and not simply contained in the certificate issued to the parent. Carriers that use the integrated option do not issue a separate certificate or a rider since coverage under the integrated option is identical to and subject to all the provisions of the parent’s certificate. Just as the conversion provision in a group plans advises the covered person of the opportunity to apply for a conversion policy, the NJCROD provision advised the dependent of the opportunity to elect continued coverage. Likewise, just as the conversion provision does

not attempt to provide details on the exact terms and conditions of the conversion policy, the NJCROD provision does not attempt to provide exact details on the terms and conditions of the continued coverage. The Over-Age Dependent Rider accomplishes this task. No change is being made in response to the comment.

COMMENT 7: The Commenter believes that the Over-Age Dependent rider is not necessary and suggested that the NJCROD provision provides ample information to the over-age dependent, if such provision were to be revised as suggested in a prior comment, to detail the application of the deductible and maximum out of pocket.

RESPONSE: The Board disagrees with the Commenter. Carriers that select the stand-alone option must issue a certificate to the over-age dependent that is appropriate to the coverage available to the dependent. The rider, as proposed, addresses myriad provisions that require modification or complete elimination as regards coverage for the over-age dependent. No change is being made in response to the comment.

Federal Standards Statement

The adopted amendments and new rule are intended to comply with State law. A dependent who has elected to continue his or her coverage as an over-age dependent pursuant to P.L. 2005, c. 375 shall not be entitled to further continue coverage under Federal law, COBRA, 29 U.S.C. §§ 1161 through 1168, when the continuation pursuant to P.L. 2005, c. 375 ends. The adopted amendments and new rule do not expand upon the requirements set forth in this Federal law.