

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

SMALL EMPLOYER HEALTH BENEFITS PROGRAM

Small Employer Health Benefit Plans

Proposed Amendments: Exhibits F, G, K, W, Y, HH and II of the Appendix to N.J.A.C. 11:21

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 an exception to the calendar requirement.

Proposal Number: PRN 2014-

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 Exhibits F, G, W, Y, HH and II of the Appendix to N.J.A.C. 11:21 at a **public hearing** to be held Thursday November 13, 2014 at 11:00 a.m. in the 11th floor conference room of the Mary Roebling Building, 20 West State Street, Trenton, New Jersey.

Submit written comments by November 18, 2014 to:

Ellen DeRosa, Executive Director
Small Employer Health Benefits Program
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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 Plan 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, and 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 following proposed amendments generally apply to each of the standard plans set forth in Exhibits F, G, W, Y, HH and II.

The SEH Program Board proposes updating the variable text on the schedule pages to illustrate the increase in the greatest amount of maximum out of pocket for 2015 consistent with federal requirements at 45 C.F.R. 156.130. The schedule pages, as amended illustrate a maximum amount of \$6,600 which is the maximum amount permitted during 2015. As the

maximum out of pocket increases each year under federal law, the variable range for the maximum out of pocket amount permitted for the standard plans is intended to increase also.

To comply with the requirements of the federal Paul Wellstone and Pete Domenici Mental Health Parity Equity and Addiction Act of 2008 (MHPAEA), Public Law 110-343,¹ and the final regulations at 29 C.F.R. 2590.712 as well as 45 CFR 146.136 and 45 C.F.R. 147.160, the payment limits included on the schedule pages are being amended to specify that the 30-visit limit for physical therapy, occupational therapy and speech therapy does not apply when the therapy is to treat autism.² The 30-visit limit is a cumulative quantitative treatment limitation prohibited by 29 C.F.R. 2590.712(c)(2) and 45 C.F.R. 146.136(c)(2). The provision in the forms contained in the various exhibits, detailing benefits for the treatment of autism and other developmental disabilities, has been similarly amended. In addition, the SEH Program Board proposes amending the benefits for behavioral interventions to remove the age 21 limit. The age 21 limit is considered a non-quantitative treatment limit as defined at 29 C.F.R. 2590.712(a) and 45 C.F.R. 146.136(a) given the nature of the treatment.

The SEH Program Board is proposing to amend the Payment of Premiums-Grace Period provision to add variable text that would be included when the group policy or group contract is issued to a small employer through the SHOP. With respect to SHOP-purchased policies, premiums are not paid directly to the carrier, but rather, are paid to the SHOP or an entity designated by the SHOP (see 45 C.F.R. 155.705(b)(4)). The proposed amendment states that payments are to be made to the SHOP or the SHOP-designated entity.

¹ MHPAEA is in sections 511 and 512 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 (Division C of Pub. L. 110-343), and amended section 712 of the Employee Retirement Income Security Act of 1974, section 2705 of the Public Health Services Act, and section 9812 of the Internal Revenue Code of 1986, all with respect to group health plans. Subsequent amendments to these acts made by the Patient Protection and Affordable Care Act, Pub. L. 111-148, and the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152 (collectively, referred to as the Affordable Care Act), effectively extended application of MHPAEA to individual health plans.

² Autism is defined as a biologically-based mental illness in New Jersey pursuant to L. 1999, c. 106 (see at N.J.S.A. 17B:27A-19.7).

The SEH Program Board is proposing to amend the definition of Hospice based on advice from the New Jersey Hospice and Palliative Care Organization that the appropriate accreditation entities are the Joint Commission, the Community Health Accreditation Program and the Accreditation Commission for Health Care.

The SEH Program Board is proposing a new definition of Orientation Period and an amendment to the Waiting Period provision to satisfy the requirements of 29 C.F.R. 2590.715-2708. The orientation period, which may not exceed one month, is the period during which an employer and employee determine whether the employment situation is satisfactory and training and orientation occur. The waiting period begins following the conclusion of the orientation period. In addition, the Board proposes amending the definition of employee's eligibility date to refer to the orientation period.

The SEH Program Board is proposing to remove the phrase “, and the majority of the eligible Employees are employed in New Jersey” from the first paragraph of the definition of small employer as set forth in the plan forms. Removing this language will make the definition in the standard plan forms consistent with the definition of small employer now in the rules at N.J.A.C. 11:21-1.2. Similarly, the last paragraph of the Eligible Employees provision addressing partners, proprietors and independent contractors was inadvertently retained. It was an oversight that the language in the exhibits was not removed at the same time the language was revised in the definition section of the rules at N.J.A.C. 11:21-1.2.

In addition, the SEH Program Board is proposing to amend standard plan provisions regarding Mammogram Charges to assure compliance with New Jersey P.L. 2013, c. 196, which modified New Jersey's long-standing requirements for coverage of mammogram screenings for breast cancer on a periodic basis, basically requiring certain additional types of imaging be

covered under certain circumstances. The SEH standard plans have traditionally provided coverage for mammography, both as a screening service and a diagnostic service, and the SEH Program Board has conformed to the requirements of the various statutes regarding mammography when providing for it in the standard plans. Accordingly, the SEH Program Board proposes to modify the language in the standard plan forms to comply with the requirements of the new statute.

The SEH Board proposes including a family deductible credit provision to the policy form for plans B – E which appears in Appendix Exhibit F. The family deductible limit provision appeared in prior versions of the document and was inadvertently dropped from the document adopted for January 2014. The corresponding certificate which appears in Appendix Exhibit W appropriately includes the family deductible limit text.

The SEH Board proposes including a maximum out of pocket provision for use with plans that could be used in conjunction with a health savings account.

The SEH Board proposes amending the vision benefit section that addresses pediatric vision benefits to address benefits for low vision. The vision benefits section was included in plans effective January 1, 2014 and is one of the essential health benefits required by 42 U.S.C. 18022. As allowed by 45 C.F.R. 156.110, the pediatric vision services included in New Jersey small employer plans are substantially similar to those contained in the Federal Employee Vision Insurance Plan package of services. The SEH Board recently learned that the Federal Employee Vision Insurance Plan package includes coverage for low vision and is amending the vision benefit to add coverage for low vision evaluation and low vision aids.

The SEH Board proposes amending the standard plans to explicitly address the coverage for the surgical treatment of morbid obesity. The existing standard plans cover the surgery by

means of the exclusion which states that weight reduction or control is not covered unless there is a diagnosis of morbid obesity. The explicit benefit language the SEH Board proposes to include in the standard plans is identical to the provision that already exists in the standard individual health benefit plans. See N.J.A.C. 11:20 Appendix Exhibit A. The precise provision addressing surgical treatment of morbid obesity will eliminate the questions employees and their dependents have regarding whether the surgery is covered. The SEH Board also proposes amending the exclusion language to better clarify the weight reduction services that are excluded and those that are covered.

The SEH Board proposes amending the certificate and evidence of coverage documents that include ERISA provisions to allow inclusion of any additional information consistent with the requirements of 29 C.F.R. 2590.715 – 2715.

The SEH Board proposes amending the standard plan text to remove references to a lifetime maximum benefit. None of the plans feature a lifetimes maxim benefit.

The SEH Board proposes amending the Explanation of Brackets, Exhibit K to clarify that the variable text in the hemophilia provision must be included in all managed care plans.

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 (as amended) 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 expects that the amendments necessitated by MHPAEA will have a positive social impact with respect to the families of persons with autism. The availability of physical, occupational and speech therapy without any visit limits will allow families to continue such therapies beyond the prior 30-visit limit. The opportunity for persons of all ages to be covered for applied behavior analysis beyond the age of 21 will allow continuity of services beyond a fixed age.

The SEH Board does not expect any particular social impact as a result of the remaining proposed amendments to the standard plan forms and certificates contained in Exhibits F, G, W, Y, HH or II. The Board's position is based on the fact that the proposed amendments are intended to provide consistency in terms among rules, statutes and the plan forms, and will not introduce new concepts that enhance or diminish the rights, opportunities, or obligations of any interested parties. In that regard, it should be noted that the change to the definition of small employer is being made to assure consistency between the forms and the rules, with which carriers are already required to comply. The proposed amendments regarding treatment of morbid obesity are being made to provide clarity regarding the benefit. The proposed amendments to the language concerning the coverage of mammography services are made to assure that the benefits described in the standard plans are consistent with the requirements of P.L. 2013, c. 196. The SEH Board notes most of the services the law specifically requires to be covered are already covered when medically indicated, and thus, the inclusion of amended language has little impact on the benefits a covered person will receive. The SEH Board understands that some carriers may have considered three-dimensional mammography experimental, and thus, prior to L. 2013, c. 196, such carriers would have denied coverage of

three-dimensional mammography. However, the law requires carriers to cover three-dimensional mammography in certain situations now. A covered person who requires such a test would benefit from the inclusion of express language affirming that the test is covered.

Economic Impact

The SEH Board expects that the amendment to comply with P.L. 2013, c. 196 could result in an economic impact. The SEH Board notes that since the Mandated Health Benefits Commission was not given the opportunity to evaluate the benefits required by P.L. 2013, c. 196 there is no data to address any potential costs that may be associated with the benefits that were required to be included. The economic impact of this benefit is thus unknown.

The SEH Board expects that the amendment to comply with MHPAEA will have an economic impact as the amendments eliminate visit limits and an age 21 age limit and thus carriers will be required to cover more services. While the SEH Board expects the increased benefits could result in increased premiums, the amount of the increase is unknown. Since carriers were required to file rates for 2015 by the end of June 2014, the impact on rates will be deferred until 2016 rates.

The SEH Board expects a neutral economic impact as a result of the remaining proposed amendments to the standard plan forms and certificates contained in Exhibits F, G, W, Y, HH or II. The Board does not believe there will be any specific economic impact because the proposed amendments merely provide consistency in terms among rules, statutes and the plan forms, and generally do not introduce new concepts or requirements in practice. Accordingly, the Board does not believe there will be any quantifiable change in costs for carriers, producers or any of their business partners, and further, the Board does not believe there will be any significant

change in benefits for consumers of health care services (employers, employees and/or dependents) or for the health care providers offering the services.

Federal Standards Statement

These proposed amendments address some of the same subject matter regulated by Federal law. Specifically, Federal law establishes standards with respect to health coverage offered to small employers, as well as eligibility standards that determine which employers are small employers for purposes of certain types of health coverage. However, these proposed amendments do not seek to exceed the standards established by Federal law, and thus, the SEH Board does not believe an analysis is required. Indeed, the proposed amendment to the definition of small employer in the plan forms will better align the definition with the Federal standard. Further, the proposed amendment to the coverage of mammography services continues to be within the Essential Health Benefits (EHB) benchmark previously established for New Jersey for calendar years 2014 and 2015; the EHB benchmark includes coverage of screening and diagnostic mammography services consistent with Federal laws requiring coverage of services recommended by the United States Preventive Services Task Force and the comprehensive screening guidelines supported by the Health Resources and Services Administration of the U.S. Department of Health and Human Services (see, 42 U.S.C. 18022 and 42 U.S.C. 300gg-13, as well as 45 C.F.R. 147.130).

The proposed amendments satisfy the requirements of the federal Paul Wellstone and Pete Domenici Mental Health Parity Equity and Addiction Act of 2008, and the final regulations at 29 C.F.R. 2590.712, 45 C.F.R. 146.136 and 45 C.F.R. 147.160, and do not exceed any of the requirements of this federal law.

Jobs Impact

The SEH Board does not anticipate that any jobs will be generated or lost as a result of the proposed amendment. Commenters may submit data or studies on the potential jobs impact of the proposed amendments, together with their comments on other aspects of the proposal.

Agricultural Industry Impact

The SEH Board does not anticipate that the proposed amendment 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 law in question does 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. Compliance costs are discussed in the Economic Impact above. No additional professional services would have to be employed in order to comply with the proposed amendments, repeals, and new rules.

Housing Affordability Impact Analysis

The SEH Board does not believe the proposed amendments will have an impact on housing affordability in this State because the proposed amendments only relate to health coverage plans offered by carriers for purchase in New Jersey, and are not expected to have either a positive or negative economic impact on any industry.

Smart Growth Development Impact Analysis

The SEH Board does not believe the proposed amendments will have an impact on smart growth in this State and further, believes there is an extreme unlikelihood that the proposed amendments would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the proposed amendments only relate to health coverage plans offered by carriers for purchase in New Jersey, and are not expected to have either a positive or negative social or economic impact on any industry.

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