

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 to -56

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

Proposal Number: PRN 2021-.

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 April 6, 2021 at 10:00 a.m. by teleconference in accordance with P.L. 2020 c. 11 using the following teleconference information: Dial-in number 888-204-5984; Access Code: 3649940#.

Submit comments by April 12, 2021 to:

Ellen DeRosa
Executive Director
New Jersey Small Employer Health Benefits Program Board
PO Box 325
Trenton, NJ 08625-0325
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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 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. 2019, c. 472, which requires carriers to limit the covered person's cost sharing liability for prescription drugs under certain plans. The SEH Board proposes amendments to the specimen schedule pages to illustrate the maximum amount a covered person can be required to pay for a 30-day supply of a covered prescription drug.

To comply with the requirements of P.L. 2019, c. 58, the SEH Board proposes the following amendments to the Definitions section:

- The definition of developmental disability, which is also referred to as neurodevelopmental disability, is amended to refer to a neurodevelopmental disorder as referenced by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), and any subsequent editions. The SEH Board notes that the replaced definition was taken from a 1985 law and assumed a distinction between mental and physical impairments. Pursuant to P.L. 2019, c. 58 and the DSM-5, such a distinction does not exist for developmental disability.
- A definition of Mental Health Condition consistent with the definition in P.L. 2019, c. 58 is added and replaces the previously defined term Mental Illness.
- The term Mental Health Conditions replaces Mental Illness in various definitions and wherever the term appears throughout the forms.
- A definition of Same Terms and Conditions consistent with the definition in P.L. 2019, c. 58 is added.

To address the requirements of P.L. 2019, c. 343, regarding breastfeeding support, the SEH proposes to expand the definition of practitioner to include lactation consultants and lactation counselors.

To comply with the requirements of P.L. 2019, c. 58, the SEH Board proposes re-naming the Mental Illness or Substance Use Disorder provision as Mental Health Conditions or Substance Use Disorder and stating that the benefits for treatment of mental health conditions are subject to the same terms and conditions as apply to other medical or surgical benefits. The SEH Board notes that P.L. 2017, c. 28 also governs specific benefits for the treatment of substance use disorder.

Bulletin 20-35 issued by the Department of Banking and Insurance requires small employer health benefits plans issued through the Small Business Health Options Program to define the date pregnancy is confirmed by a health care provider as a triggering event. Triggering events are defined in the standard health benefits plans and are those events that provide a special enrollment period opportunity. To comply with the requirements of Bulletin 20-35 the Board proposes amending the definition of Triggering Event to include the date of confirmation of pregnancy by a practitioner, which is the term the standard plans use for a health care provider. In addition, the Board proposes amending the Special Enrollment Period provision to state the effective date of coverage which may be elected by the employee and may be either the first of the month in which pregnancy is confirmed or the first of the month following enrollment in the small employer plan.

The SEH Board proposes the inclusion of a new provision to address the coverage requirements of P.L. 2019, c. 343, with respect to breastfeeding support. As indicated on the specimen schedule pages, no cost sharing is required for such coverage.

The SEH Board proposes removing the variable brackets around the Donated Human Breast Milk provision. The text was adopted prior to the January 1, 2019 effective date of P.L. 2017, c. 309, and could thus be omitted in plans issued or renewed prior to January 1, 2019. With the effective date past, all plans must include the text and the variable brackets are no longer necessary.

The SEH Board proposes amending the prescription drugs provision to delete text that is no longer necessary. Twenty years ago, pre-authorization for certain prescription drugs was relatively new, and a provider could have written a prescription for which pre-authorization was required, but the provider may not have been aware of the pre- authorization requirement for certain drugs or may have otherwise neglected to obtain pre-authorization. A patient bringing the prescription to the pharmacy would not have been able to secure the prescription the provider prescribed. As a safety net, the SEH Board included text in the prescription drugs provision to

require coverage of a 96-hour supply to allow time for the pre-authorization process to occur. The SEH Board notes that prescribing processes have evolved to the point where most prescriptions are issued electronically, and providers have access to real-time information regarding authorization for prescription drugs. Therefore the need for a 96-hour supply no longer exists. The SEH Board notes that no statute or regulation required the inclusion of the 96-hour supply provision.

To comply with the requirements of P.L 2019, c. 361, the SEH Board proposes amending the Contraceptives provision to include the required services and supplies and to eliminate the option for a religious employer to decline coverage of contraceptives. The amendments include variable text applicable to a high deductible health plan.

To comply with the requirements of P.L. 2019, c. 58, the SEH Board proposes amendments to both the Therapy Services provision and the Diagnosis and Treatment of Autism and Other Developmental Disabilities provision. As explained regarding the proposed amendments to the definition of developmental disability, the terms neurodevelopmental disability and a developmental disability can be used interchangeably. Since neurodevelopmental disability is included in the definition of mental health condition, benefits for the treatment of a developmental disability must be provided subject to the same terms and conditions that apply to medical and surgical benefits. Thus, visit limits for therapy services cannot be applied to therapies to treat a developmental disability. The Therapy Services provision is amended to direct the reader to the Diagnosis and Treatment of Autism and Other Developmental Disabilities provision for a complete discussion of the covered therapy benefits. The Diagnosis and Treatment of Autism and Other Developmental Disabilities provision is proposed to be amended to remove all visit limits and to explicitly state that pre-approval cannot be required. The sample schedule page text is similarly amended to remove impermissible limits.

The SEH Board proposes amending the Transplant Benefits provision to update the list of transplants to include all non-experimental or investigational transplants currently performed. The SEH Board notes the existing list dates to 1994.

The SEH Board proposes deleting the exclusions for nicotine dependence treatment since the exclusion is inconsistent with the requirements of P.L. 2019, c. 58.

The SEH Board proposes adding variable text to the exclusion for immunization agents under outpatient coverage for prescription drugs. While plans currently cover immunizations

given at a pharmacy by an immunizing pharmacist, the coverage is provided as a medical benefit. The variable text would allow a carrier to cover the immunizations as a pharmacy benefit. The SEH Board notes the immunizations available at a pharmacy are generally preventive, such as influenza immunizations, and thus no cost sharing applies whether covered under the medical or prescription drug benefit.

The SEH Board proposes amending the non-prescription drugs exclusion and the exclusion addressing drugs without a prescription to address coverage of over-the-counter contraceptives as required by P.L 2019, c. 361.

To eliminate conflicting exclusion text, the SEH Board proposes deleting the exclusion for “vitamins, except Legend Drug vitamins” and amending an existing exclusion for “vitamins and dietary supplements” to except those vitamins covered as preventive care from the exclusion. Consistent with the deletion of the exclusion that referred to Legend Drug vitamins, the term Legend Drug is proposed to be deleted from the Definitions section.

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 compliance with the newly enacted mental health conditions contraceptives, breastfeeding support and prescription drugs laws will have a positive social impact for those consumers who will benefit from the coverage the law requires. The SEH Board anticipates the update list of transplants will have a positive social impact in that it will ensure all covered persons are aware of the extent of coverage and receive necessary and appropriate transplant services. The SEH Board anticipates a positive social impact from inclusion of the confirmation of pregnancy as a triggering event, in that the employee and dependents may enroll for coverage, and prenatal care can be covered.

Economic Impact

The SEH Board expects that additional coverage for the treatment of mental health conditions as well as coverage of contraceptives, and breastfeeding support, the limits on cost sharing for prescription drugs and the confirmation of pregnancy triggering event will provide a positive economic impact for consumers.

The SEH Board does not have information necessary to quantify the economic impact in terms of the amount 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, none of the proposed amendments are intended to comply with Federal law. 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. 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 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 benefit levels and 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 benefit levels and 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, 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:

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20 West State Street, 11th Floor
PO Box 325
Trenton, NJ 08625-0325

or

New Jersey Office of Administrative Law
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Trenton, NJ 08625-0049