**INSURANCE** 

DEPARTMENT OF BANKING AND INSURANCE

SMALL EMPLOYER HEALTH BENEFITS PROGRAM

**Small Employer Health Benefits Plans** 

Proposed Amendments: N.J.A.C. 11:21 Appendix Exhibits F, G, K, W and Y.

Proposed Repeals: Appendix Exhibits 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 through 56.

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

requirement.

Proposal Number: PRN 2022-

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** using Microsoft Teams to be held on Thursday December 15, 2022 at 2:00

PM.

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Submit comments by December 23, 2022 to:

Ellen DeRosa

**Executive Director** 

New Jersey Small Employer Health Benefits Program Board

PO Box 325

Trenton, NJ 08625-0325

Email: ellen.derosa@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 the authority at P.L. 1992, c. 162 (codified at N.J.S.A. 17B:27A-17 through 56), as subsequently amended and supplemented. The SEH Board has set forth the requirements with which carriers must comply in offering standard plans in the rules at N.J.A.C. 11:21, and has set forth standard plan language for policies, contracts, certificates, and evidence of coverage in the Appendix at 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 at Exhibit W; the language for the contract form for the HMO Plan is at Exhibit G; the language for the HMO evidence of coverage is at Exhibit Y; and the language for the HMO-POS Plan contract form is at Exhibit HH, while the language for the HMO-POS evidence of coverage is at Exhibit II. Note that Appendix Exhibits HH and II

are proposed to be repealed. 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 at Appendix Exhibits F, G, W and Y.

Recognizing that every carrier produces schedule pages to accommodate specific plan designs, and the impossibility of offering sample schedule pages to address myriad designs, the Board proposes eliminating many of the sample schedule plans and retaining some samples to illustrate basic coverage. With respect to the HMO plan, Exhibits G and Y, a limits section is proposed to be added to the schedule using text based on the payments limits section in Plans B – E, Exhibits F and W.

To comply with the non-discrimination provisions discussed in the adopted Plan and Benefit Payment Parameters for 2023, the age 15 limit for hearing aids has been removed. The amendment first appears on the schedule page, appears again in the definition of durable medical equipment, and again in the covered charges provision addressing hearing aids.

The Board is aware that doula services must be covered under Medicaid pursuant to P.L. 2019, c.85. Given the recent focus at State and Federal levels on maternal health outcomes and race disparities and some research showing that doula care is associated with better birth outcomes, including reductions in cesarean section rates, the Board proposes to include doula services, subject to some limits, as an optional covered charge. As an optional covered charge, carriers that have contracts with providers that can perform the services and wish to include the coverage may do so. Amended text appears on the schedule page, in the definition section with a definition of doula, as an amendment to the definition of practitioner, and as a benefit in the maternity care provision.

The Board proposes to add a provision specifically addressing coverage for abortion care that includes coverage for both medical and surgical abortions. As stated in the November 23, 2022 Report to the Governor and Legislature regarding the Freedom of Reproductive Choice Act, there is a need for a clear regulation to provide for abortion coverage under state-regulated health benefits plans consistent with state policy and the rights promulgated in P.L. 2021, c. 375. As proposed, the new provision would be deleted for a religious employer and exclusion text would be included. The Board proposes to amend the existing optional exclusion for abortion to address the exclusion applicable to a religious employer.

The definition of Triggering Event is proposed to be amended to clarify that in the case of a permanent move from another country or U.S. Territory, it is not necessary to demonstrate having had minimum essential coverage.

The Board proposes to add optional coverage for walk-in clinics that are commonly located within some large pharmacies. A definition of walk-in clinic has been added to the definitions section and a benefit provision has been added to the covered charge section. The text is included as optional to allow inclusion by carriers that have arrangements to offer coverage at walk-in clinics.

As required by the Public Health Service Act (PHS Act) as extended or added by the Consolidated Appropriations Act, 2021, a provision entitled "Network Provider Information" is proposed to be added to the standard plan text in the sections addressing PPO, EPO and POS plans in Exhibits F and G, and to the Member Provisions in Exhibits W and Y.

As further required by the PHS Act as extended or added by the Consolidated Appropriations Act, 2021, a provision addressing limitations on the application of cost sharing under stated circumstances is proposed to be included in a new provision entitled "Impact of the

Consolidated Appropriations Act (CAA) on Copayments, Deductible Amounts, and/or Coinsurance, Maximum Out of Pocket Amounts and Balance Billing."

The Board proposes to include an optional virtual primary care benefit that enhances the typical in-person primary care benefit. The virtual benefit is in addition to and does not replace the typical primary care benefit. The benefit is included as optional to allow carriers that have arrangements to provide virtual primary care to make the benefit available.

The Board proposes to re-name the Pregnancy benefit in Exhibits F and W to Maternity Care to more accurately name the scope of the coverage provided. This newly named provision addresses the optional doula benefits discussed above. The same Maternity Care benefit is proposed to be specifically added to Exhibits G and Y.

The Board proposes to include optional coverage for gene-based, cellular and other innovative therapies provided by a practitioner or hospital. The coverage would enhance the coverage otherwise available to treat certain medical conditions. The benefit is included as optional to allow carriers that have arrangements to provide therapies to make the benefit available.

The Board proposes to revise the colorectal screening benefit to reduce the age restriction from 50 to 45 to be consistent with the most recent published guidelines of the American Cancer Society.

The Board proposes to revise the vision screening benefit in Exhibits F and W to extend the limiting age from 17 to age 19 to align the age with the pediatric vision benefit.

The Board proposes to clarify the Coordination of Benefits provision with respect to persons who are eligible for Medicare but not enrolled in Medicare Part B. In addition to adding clarifications to the Purpose of This Provision section, the Board proposes adding a section

entitled Procedures to be Followed when a Person is Eligible for Medicare Part B but Not Enrolled. Although the method of coordination is not new, the failure to enroll in Medicare Part B has serious consequences, and the Board expects the clarified language will heighten awareness of the need for certain employees to enroll in Medicare Part B on a timely basis.

The SEH Board proposes the repeal of Appendix Exhibits HH and II that provide text to issue a Point of Service (POS) plan by carriers with authority to do business as an HMO (known as an HMO-POS plan). When POS plans were first introduced some years ago, all carriers had an interest in offering a POS option. While a POS option was easily accomplished using the standard plan text in Exhibits F and W for carriers with an insurance license, the offering by an HMO necessitated the creation of new standard plan documents. The SEH Board adopted the standard plan text for an HMO-POS plan to satisfy that interest. Interest in the POS option ceased, and no HMO has issued HMO-POS plans for some years. Therefore, the SEH Board proposes repealing Appendix Exhibits HH and II.

Lastly, the Board proposes amendments to the Explanation of Brackets, Exhibit K, consistent with the amendments discussed above.

### **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 the 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 the 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 at N.J.S.A. 17B:27A-51 may result in the publication of this notice of proposal in the New Jersey Register after the comment period has concluded.

### **Social Impact**

The SEH Board anticipates that expanded coverage for hearing aids will have a positive social impact for those consumers over the age of 15 for whom hearing aids will now be covered supplies. The Board expects that provisions included to address requirements of the Consolidated Appropriations Act will help heighten awareness of the protections under Federal law. The SEH Board expects that the clarifications to the Coordination of Benefits Provision to address persons who are eligible but not enrolled for Medicare Part B will facilitate better understanding of the requirement for certain persons to enroll for Medicare Part B.

### **Economic Impact**

The SEH Board expects that the expanded benefit for hearing aids will provide a positive economic impact for consumers.

The SEH Board expects that the variable benefits for doula benefits and virtual PCP will have a positive economic impact for consumers covered under plans issued by carriers that elect to include the benefits.

The SEH Board expects the clarification to the Coordination of Benefits provision will have a positive economic impact on employees who may otherwise have neglected to enroll for Medicare Part B and face reduced benefit due to the failure to timely enroll. With the clarified provision, the Board expects more employees will timely enroll in Part B and avoid reduced benefits.

The SEH Board does not have information necessary to quantify the economic impact in terms of the amount of benefits carriers will 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, one of the proposed amendments is intended to comply with a Federal requirement included in the Notice of Benefit and Payment Parameters. Other proposed amendments address requirements of the Consolidated Appropriations Act (CAA). The proposed amendments do not exceed the requirements of the Notice or CAA. 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 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 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 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:

**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 in this notice, but may be reviewed by contacting:

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or

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