

**INSURANCE**

**DEPARTMENT OF BANKING AND INSURANCE**

**SMALL EMPLOYER HEALTH BENEFITS PROGRAM**

**Small Employer Health Benefit Plans**

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

**Adopted 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.

Proposed: December 2, 2022

Adopted: December 29, 2022.

Filed: \_\_\_\_\_, 2022 as R. 2022 d. \_\_\_\_ **with non-substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Effective Date: January 1, 2023

Operative Date: April 1, 2023

Expiration Date: October 12, 2023.

**Summary of Hearing Officer's Recommendations and Agency Responses**

The New Jersey Small Employer Health Benefits Program Board (SEH Board) held a hearing on Thursday, December 15, 2022 via Microsoft Teams in accordance with P.L. 2020, c. 11 to receive testimony with respect to the proposed amendments to the standard health benefits plans, set forth in Exhibits F, G, W, and Y of the Appendix to N.J.A.C. 11:21. Ellen DeRosa, Executive Director of the SEH Board, served as hearing officer.

Two members of the public offered testimony during the hearing: Marie Tasy, Executive Director New Jersey Right to Life and Kaitlyn Wojtowicz, Vice President of Public Affairs Planned Parenthood Action Fund of New Jersey. Both commenters provided a written copy of their testimony. The hearing officer made no recommendations regarding the proposed amendments. 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**

The following is a summary of the comments received from members of the public and the SEH Board's responses. The SEH Board received a total of 431 timely written comments. Written comments were received from the following:

William Russiello, Ira Mendlesberg, Mark Waltzer, Zoe Leach, Janna Bogan, Naomi Godfrey, Lauren Piscitelli, Louise Marinucci, Anita Gyamera, Samantha Allen, Denise Lytle, Sarah Hoban, Christi Cheek, Jessica Ramirez, Barbara Maddelna, Tracy Toler-Phillips, Leandra Gerena, Evelyn C. Murphy, Cori Bishop, David Lavender, Margaret O'Shea, Deirdre Brown, Amy Pearlmuter, Lorraine Franz, Eileen Bird, Judy Manton, Mariel Hufnagel, Maria Eva Doringo, Kelly Kenny, Lelan Lockwood, Cori Herbig, Eddie Rivera, Lynne Berk, Kimberly Furniss, Jodi Fekete, Regina Sheeran, Jodi Magee, Susan Bennett, Margaret Deuchar, Gina Raggette, Patricia Ricker, Francesa Rodriguez, S Barbuto, Saray Ramos, Marietta Cahill, Donna Burdick, Nancy Kozeradsky, Ashely DeNegre, Lee Harman, Andrea Long, Maria Palmer, Rachel Grencavich, Carol Cohen, Sally Jane Gellert, Deborah Ward, Marissa Anema, Phoebe Pollinger, Lois Porreca, Miah Brawley-Wang MD, Christopher Banko, Maryjane Genestra, Carolyn Loudermilk, Stephanie Calluori, Betty Ann Duggan, Linda Rogers, Jami Thall, New Jersey Policy Perspective, All Above All, Planned Parenthood Action Fund of New Jersey, Maria Franchino, Richard Pieslak, Peggy Burke, Norine Koza, Rosemarie Stone, Dr. Angela Lockhart, Jessica Peck, Jennifer Rykert Dean, Msgr. Kenard Tuzeneu, Diane Perretti, Rickard J. Knott, Kathy Salter, Karin A. Mille, Ken Stanton, Kathy O'Keefe, Bill Murphy, James R. Weidner MD, Kurt Kalenak, Eileen Fisher, Carol Wright, Dave Larkin, Sherwood and Sue Wheeler, Mary Burns, Mary Reilly, James McCracken, Colette Liddy, David Furbish, Donald Weigl, Karen Iveson, Jean A. Manigold, Diane Potts, Brianna Bals, Dennis and Teresa O'Brien, Anthony Musillo, Charlene Braida, Marta Neri, Marianne Lynch, Lori Evans,

Barabara Karg, Charles Wasilewski, Theresa Petrik, Joy and Tom, Marie D'Urso, Amy Galarowicz, Robert Budelman, Phil Horjus, Frank Coluccio, Barb, Deborah Melicharek, M Cecilia Q Insignares CEO, Barbara Carunchio, Maria Spinelli, Joe Burns, Gloria Fetta, Christine Freitag, Fred and Mary Hofmann, Emily Sparks, Rick Beckley, Mary Granahan, Katherine Wahl, Mary Ann Carr, Deborah S. Deane, Lois Moran, John Loftus, Bruce Young, Andrew and Jo-Ann Sangataldo, Mary Lawler, Joseph Tevington, Carol Donofrio, Marlys Prescott, Pat Hammond, Bruce Young, Lauren Pristas, Joshua Gabrielsen, Dolores Steinberg, Maria Ramirez, Theresa Temple, Lea Novak, Donna Young, Michele Alford, Carol Riggs, Lowell Patterson, Frank and Mary Anne LaCava, Raquel Perez, Claire Howson, Audrey Henry, Donna Hart, Jennifer, Rosalind S. Edman, Ph.D., Henrietta Scharibone, Siobain Rogers, William Menzel, Carmen Galindo, Jenica Purisima, Marybeth Boesner, Professor F. Apicella, Marvelia Mangogna, Robert Coda, Brain Flanagan, Walter Olshanski, Dana Veronica, Anne Marie Crann, Elizabeth Crann, Kathleen Warwick, Jonathan DeGraff-Cipriani, Meire, Patricia L, Wenzel, M. Glynn, Charles Wasilewski, Maria Franchino, Terry, Mark Stadler, Jacklyn DeGraff-Cipriani, Louise Riccobene, Matthew Avigliano, Davey Willans, Gerrie MacMichael, Lois Dark, Linda and Joseph Garafalo, Dr. James Brunn, John Croce, Barabara Moser, RN, Anita Davies Bagnall, Lawrence Skalko, Lisa Dalia, R Douglass, John E. Kane Jr., Michaele Casey, Alice Grippaldi, Maureen Sullivan, Joseph Miczak, Marianne Komek, Marie Tasy, Mary Ann Carr, Theodore Tyszkiewicz, V Terranova, Noreen I. Susinno, Sister Laura Bezila, MPF, Sharon Z, Mary Fahsbender, Loren Grace Bond, Amy Verzella, MG, barbabbs, Mary Rausch, Brian Zanyor, Karen Hannon, Kerry Shannon, John Provinsal, Eleanor Iannelli, Lou Karrer, Joseph C. Santoliquido, CharlesElbert, Mike Sacchetti, Gina Sacchetti, Henry Wright, David Goeller, Toni Esposito, Eugenia and Mark Skuby, Sean Hurley-Del Vecchio, John Clymore, Joan Carbone, Anthony Losito, Carol Doyle, Richie DeVito,

David M. Ricci, Fred Kimble, Susan Wright, Marianne Gennaro, Lois Anderson, Daniela Patrelli, Mary Jane Deutsch, Julia Wakelee, Jeanne Dikdan Gigli, Matt and Helen Bajek, JoeBurns, Frank McLaughlin, Christine Roth, Patricia Staley, Coleen Harris, Ethel Hermenau, James Punch, Theresa Westdyke, Jacinto Fernandes, Susan M. Roman, doctorpetersonc, iraqvet72, romanseight6, noahnsteve, Joseph Abbruscato, Fred Repsik, Alicja Jurek Kosecki, Joseph Fagan, Angela Tejada, Gerard Murphy, Judy Jordan, Joseph Kapp, Deborah Stump, Angela Amend Kwasnik, Camilla Coniglio, Valerie Ryan, Rosanne Rosty, Charles Wasilewski, Joe and Noel Porretta, Patricia Talrico, JoAnne Lotorto, Margarita Sori, erikladzenski, Racie Blewitt, Frederick J. Fuchs, St. Cecelia Social Ministry, Ken Travers, Mary and John Peragine, Dolores Gumina, Eugene Newman, Rose Taylor, Marion Tuttle, John Eiche, Debbie Berger, Jackie Hoffmann, Arlene Ryan, Mary-Anne Delaney, Elizabeth A. Madden, MSW, Marion Tuttle, Margaret Mazzarelli, Amy Lebrato, Helen O'Mullan, Carol Wagner, Anita Mercanti, RAL, Jackie, Peter Giglio, Patrick and Maureen Mary Robinson, Cecilia Swatton, Carrie L. Donahue, Richard Bradford, Mike DeJoy, Peter and Peggy Terrafranca, Barbara Carunchio, Dennis k. Webster, Carmelita Patricola, Jill Swagler, Lucille Quigley, William J. Marino, William Rosanelli, Rich Grieshaber, Dianne Leo, Anthony Humphreys, Kathleen Trochanowski, Mary Wagner, Diane DiGiovacchino, Jill Swagler, Ann Ruth, Katie, Debbie Milecki, William and Yvette du Fosse', Leigh Cottings, Dorothy W. Fuchs, jplabs, M. Cecilia Q Insignares, Christine Flaherty, Cecelia Slater, Greg Tompkins, Patty Doolittle, Lynn D'Ulisse, Paul Warren, Louis Karrer, Celia Galorenzo, Cynthia New, Eveleth Roderer, Linda Piacentino, Rachel Flanagan, John Maguire, Patricia Talrico, Holly McKay, Glenn Hawkswell, Rose Taylor, Marie Simonsen, Claire Burns, Anthony Giordano, Nancy O'Donell, Pat and Ken Bellan, Joseph Artale, Sharon Richards, Emily Dooley, Sister Denise, Patricia Murphy, John Maffei, Jim Quigley, Dave and Lydia Lyzinski,

Mary Breslin, Adam Falchetta, Silvaanagamallo, Laraine Hannan, Katherine Flacche, Dan Abbruscato, Christine Flynn, Art Hicks, Gregory Savoy, Susan McLaughlin, Barbara Kochie, Isabella M. Pakozdi, Camille Intelisano, Joseph Sweeney, Maria Prendamano, Lorena Berard, Marge and Bob Reilly, Barbara Cunningham, Maureen Deam, Kathleen Cremeans, Helene Weinberg, Olga Montes, Regina Branca, Maureen Buttner, Sally Cascio, Kevin Long, Mary McDonough, Jeryl Maglio, Mary Raidmondo, Mary Anne Moresco, Grace Hanlon, Dennis Rodano, Albert Kveglis, Raik Sr., Laraine Hannan, Jaqueline M. Hofmann, Pat Flannery, William Draghi, Rosemary Griffith, Cecelia Mullanaphy, Bill Knapp, George McKenna, Sandy Skorch, Yeshua Wori, Patricia Talarico, John Marion, Thomas Hicks, Ariel Bastos, Nora Brower, Steelilia, Paula Marino, Frank Roehrig, John Carlucci, Joseph Sosnowsky, Louis Keer, MD, Virgini Sosnowsky, Matthew Scalaro, Edna Klein, Peter Haas, John Connolly, Elizabeth Mikovich, Lowell T. Patterson, Tory Mills, Jenifer Chinchilla, and Deacon John Clymore.

COMMENT: The commenters thanked the Murphy administration and the Department of Banking and Insurance (Department) for moving to mandate abortion coverage in all state-regulated plans. The commenters expressed their belief that abortion is a universal right and the coverage will break down barriers to abortion care. The commenters commended the SEH Board for moving swiftly with rule-making such that coverage will be required as quickly as possible.

RESPONSE: The SEH Board notes the commenters' support for the proposal.

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care. The commenters commended the SEH Board for moving swiftly with rule-making such that coverage will be required as quickly as possible. The commenters expressed disappointment that the required coverage is not as comprehensive as it could be since the proposal did not require coverage of abortion without cost sharing.

RESPONSE: The SEH Board notes the commenters' support for the proposal. The SEH Board notes that the proposal is implementing the coverage requirement based on the Department's November 23, 2022 Report to the Governor and Legislature pursuant to P.L.2021, c.375 (the Act) . As the Act does not address cost sharing, and thus does not authorize the Department or the SEH Board to modify cost sharing requirements, a carrier may apply cost sharing, including deductible, copayment or coinsurance, as applicable, to such services provided such cost sharing is also applied to similar services or coverages under the policy. No change is being made in response to this comment.

COMMENT: The commenter thanked the Murphy administration and the Department for moving to mandate abortion coverage in all state-regulated plans. The commenters expressed their belief that abortion is a universal right and the coverage will break down barriers to abortion care. The commenters commended the SEH Board for moving swiftly with rule-making such that coverage will be required as quickly as possible. The commenter noted personal experiences and the cost associated with the services. The proposal will make the cost more easily afforded.

RESPONSE: The SEH Board notes the commenter's support for the proposal.

COMMENT: The commenter testified during the public hearing on December 15, 2022 and followed with a copy of the testimony. The commenter stated her organization was thrilled with the Department's report and thorough review of the regulatory environment. The commenter noted medical and sociological evidence regarding the importance of abortion and other

reproductive health services. The commenter believes coverage for abortion is needed to provide greater transparency, for consistency with the Medicaid market and noted the de minimis cost of coverage and the role coverage can play in creating better medical and social outcomes. The commenter thanked the SEH Board and the Department for moving swiftly on rulemaking such that coverage will be included for the 2023 plan year.

Response: The SEH Board notes the commenter's support for the proposal.

COMMENT: Commenters opposed the proposed amendments to specify coverage for elective abortions and the lack of any limitations or exceptions and noted that the proposal process appeared to have been fast-tracked denying the opportunity for fair comments and debate.

Responses: The SEH Board is making this proposal consistent with the Act and the Department's November 23, 2022 report to the Governor and Legislature. The Act was passed by the Legislature after a public hearing before the Senate, Referred to Senate Health, Human Services and Senior Citizens Committee on January 6, 2022, and a public hearing before the Assembly Appropriations Committee that same day. On April 26, 2022, the Department solicited public comment as part of the study conducted pursuant to the Act. The Department posted on its [website](#) specific questions for the public to respond to in its comments. The public comment period ran for 30 days, until May 26, 2022. Additionally, specifically related to this proposal, the SEH Board conducted a public hearing on December 15, 2022 providing an opportunity for the public to provide oral testimony. Written comments were also accepted until December 23, 2022. Therefore, the public has had multiple opportunities to comment on this proposal. No change is being made in response to this comment.

COMMENT: Several commenters contend the proposed coverage violates the consciences of NJ residents and violates American norms of conscience objections making every citizen

complicit in the performance and funding of abortion. The commenters request that the mandate not be imposed on everyone and be available only for those persons who want the coverage.

RESPONSE: The proposal is consistent with the Act. The Act codifies an individual's right to make their own decisions concerning reproduction, including the right to contraception, the right to terminate a pregnancy, and the right to carry a pregnancy to term, without government interference or fear of prosecution in the State of New Jersey. Section 3 of the Act provides that the Department may, after concluding a study and issuing a report demonstrating that such a regulation is necessary, provide that health benefit plans provide coverage for abortion, with exceptions available for religious employers. On November 23, 2022, the Department issued a report to the Governor and Legislature demonstrating the need for a regulation to provide that health benefit plans delivered, issued, executed, or renewed in this State, provide comprehensive coverage for abortion. On that same day, the Department released advance notice of intent to propose amendments and a new rule to implement the Act. The SEH Board's proposal is consistent with the intent and process established in the Act as described above. No change is being made in response to this comment.

COMMENT: Several commenters expressed concern regarding the cost of the proposed abortion coverage, and that the coverage would increase premiums.

RESPONSE: The Department's November 23, 2022 report to the Governor and Legislature looked at the potential cost of this proposal by analyzing information carriers reported in their rate filings. The report concluded that the cost of requiring abortion coverage in health benefits plans is de minimis. No change is being made in response to this comment.



COMMENT: Several commenters oppose elective abortion and coverage of elective abortion. Commenters state their belief that abortion is not health care. Commenters expressed concern that New Jersey would require coverage of abortion in health plans.

RESPONSE: The SEH Board notes the commenters' concerns and understands there are differing views on abortion generally. However, as the Act establishes a process that the Department followed, and consistent with the Legislative intent and directives contained in the Act, the SEH Board has developed this proposal accordingly. The Department's report noted that the medical evidence, including major medical organizations, point to access to the full range of safe reproductive health care services, particularly the range of recommended contraceptive methods, as central to healthy outcomes, and notably leads to fewer unintended pregnancies. Moreover, the Act provides that it is "the policy of this State to ... (3) advance comprehensive insurance coverage for reproductive care, including primary reproductive health care services, services to terminate a pregnancy..." The SEH Board has made this proposal consistent with the above. No change is being made in response to this comment.

COMMENT: One commenter expressed opposition to paying for personal insurance that would cover abortions. He said the inclusion of abortion coverage in his plan would make him complicit in the funding of abortions. He stated the coverage requirement is a violation of conscience. The commenter doubts women seeking abortion are having difficulty funding the cost.

RESPONSE: The SEH Board notes the commenter's concerns. However, consistent with the legislative intent as expressed in the Act, the Department conducted a study and issued a report recommending abortion coverage without exception. Therefore, the SEH Board has developed this proposal accordingly. The Department's report recommends such coverage because, among

other things, such coverage is associated with better health outcomes, increases consistency with Medicaid, and has a de minimis cost impact on premiums. The Department's report also noted that with respect to abortions, "costs are challenging for many low-income women." The report explained that the Federal Reserve estimates that only 76% of adults in the United States would be able to fund a \$400 emergency expense. Thus, one quarter of adults may not be able to afford an abortion without some assistance. In fact, since three-quarters of abortion patients are poor or low income, it may be that the relevant populations are not able to afford abortions. No change is being made in response to this comment.

COMMENT: One commenter stated that she filed an Open Public Records Act request for the comments the Department received in response to a request pursuant to section 3 of P.L. 2021, c. 375. She noted the vast majority of the comments appear to have expressed vehement opposition to the inclusion of abortion in health plans. She stated it is therefore irresponsible and inexcusable that the Department moved forward with action to require coverage for abortion. She explained that abortion is not health care and is rather a life-ending procedure. The commenter noted the proposal includes optional coverage such as doula benefits and suggested that coverage of abortion could similarly be an optional benefit, available to those who wish the coverage. The commenter questioned why the SEH Board proposed a rule to require coverage of abortion even before the Department proposes rules addressing such coverage.

RESPONSE: The SEH Board notes the commenter's concerns. However, consistent with the legislative intent as expressed in the Act, the Department conducted a study and issued a report recommending abortion coverage without exception. Therefore, the SEH Board has developed this proposal accordingly. The Department's report recommended such coverage because, among other things, such coverage is associated with better health outcomes, increases consistency with

Medicaid, and has a de minimis cost impact on premiums. Notwithstanding public comments in opposition to abortion in general, and the proposal specifically, the report described the study the Department undertook and extensive information that explains the reason such coverage is being recommended by the Department. No change is being made in response to this comment.

COMMENT: Some commenters have expressed, with respect to the SEH Board proposal, concerns relating to the religious employer exemption. At least one commenter stated that the exemption does not adequately address religious groups or schools and was too narrow and should apply more broadly.

RESPONSE: The SEH Board developed its proposal consistent with the Act and the Department's report and proposed rule described in the Department's advance notice. The Act provides, at N.J.S.A.26:2S-39, that, "if the department provides for coverage pursuant to this section, then the department shall also require carriers to grant, upon request of a religious employer, an exclusion under the contract for the coverage required if the required coverage conflicts with the religious employer's bona fide religious beliefs and practices." Subsection b. of that provisions also defined a "religious employer" to mean, "an organization that is organized and operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986 (26 U.S.C. s.6033), as amended." Therefore, the SEH Board has developed its proposal consistent with the statutory provision. No change is being made in response to this comment.

### **Agency Initiated Changes**

The SEH Board is making the following non-substantive and technical agency initiated changes on adoption.

1. To comply with P.L. 2021, c. 376 the SEH Board is expanding coverage for contraceptives from six months to twelve months.
2. The SEH Board is including additional variable brackets in the newly added optional provision for Gene-based, cellular and other innovative therapies (GCIT) to accommodate carriers that may wish to offer some, but not all parts of the optional 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 proposal Summary, 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.