

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 and Y

Authorized By: New Jersey Small Employer Health Benefits Program Board of Directors
(Margaret Koller, Chairperson).

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 2023-.

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** via Zoom to be held on December 13, 2023 at 10 A.M. The meeting may be accessed as follows:

<https://www.zoomgov.com/j/1615007014?pwd=RXBwWkRKZG1VUDlkemZtZXp5eUFoUT09>

Meeting ID: 161 500 7014

Passcode: 867963

One tap mobile

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+1 551 285 1373 US (New Jersey)

Submit comments by December 19, 2023 to:

New Jersey Small Employer Health Benefits Program Board
PO Box 325
Trenton, NJ 08625-0325
Fax: 609-633-2030
E-mail: ihcsehprograms@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 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 are in Exhibit F of the Appendix, while the language of the certificates is contained at Exhibit W; and the language for the contract form for the HMO Plan is in Exhibit G, while the language for the HMO evidence of coverage is in Exhibit Y. 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 and G, W and Y.

To comply with P.L. 2023, c. 2, which permits pharmacists to furnish self-administered hormonal contraceptives, in accordance with protocols established by Board of Pharmacy and Board of Medical Examiners, the Board proposes amendments to the definition of “practitioner” used in the standard plan documents.

To comply with P.L. 2023, c. 8, which requires health insurance carriers to cover colorectal cancer screenings recommended by United States Preventive Services Task Force and eliminates cost-sharing requirements for certain colonoscopies, the Board proposes amendments throughout the standard plan documents, including updated language to the “Colorectal Cancer Screening Charges” provision.

In accordance with guidance released by the United States Centers for Medicare & Medicaid Services (CMS) in May 2023, the Board proposes amendments which state that in the absence of enrollment in other primary coverage, such as Medicare, a standard plan will not take that other coverage into account when paying for covered services or supplies. In addition, the Board proposes language mandating that a standard plan will not limit or exclude coverage based on eligibility for other coverage and that coordination of benefits occurs only when the Covered Person is enrolled in other coverage.

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 laws expanding definition of “practitioner” in the context of self-administered hormonal contraceptives and providing coverage for colorectal cancer screenings recommended by United States Preventive Services Task Force and eliminating cost-sharing requirements for certain colonoscopies have a positive social impact for those consumers who will benefit from the coverage the laws require. Further, the Board anticipates the updated language reflecting CMS’s recent guidance, which prohibits carriers from taking non-primary coverage into account when paying for covered services or supplies; limiting or excluding coverage based on eligibility for other coverage, and providing that coordination of benefits will only occur when the covered person is enrolled in other coverage, will have a positive social impact in that it will ensure all carriers are providing the appropriate covered supplies and services at the appropriate cost to consumers.

Economic Impact

The SEH Board expects that the proposed amendments will provide a positive economic impact for consumers.

The SEH Board expects the coverage of colorectal cancer screenings and the expanded definition of “practitioner” in the context of self-administered hormonal contraceptives will help facilitate affordable access to needed services, resulting in a positive economic impact.

In addition, clarifying standard plan documents to reflect CMS’s guidance prohibiting carriers from taking non-primary coverage into account when paying for covered services or supplies; limiting or excluding coverage based on eligibility for other coverage, and providing that

coordination of benefits will only occur when the covered person is enrolled in other coverage will have a positive economic impact for consumers, who will be better able to discern how their standard plan will pay for covered services or supplies and at what cost, while also ensuring coordination of benefits takes place only when the appropriate coverages are in place.

The proposed amendments will not incur any additional administrative, enforcement or oversight cost for implementing agencies.

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. The proposed amendments comply with the May 24, 2023 CMS guidance regarding Benefit Coordination and Medicare Eligibility and 45 C.F.R. 155.430(b)(3), and do not exceed those Federal standards. 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 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 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, and W, Y. 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:

New Jersey Small Employer Health Benefits Program
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PO Box 325
Trenton, NJ 08625-0325
ihcsehprograms@dobi.nj.gov

or

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