INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

Individual Health Coverage Program

Individual Health Benefits Plans

Proposed Amendments: N.J.A.C. 11:20-1 and 24 and N.J.A.C. 11:20 Appendix Exhibits A, B, and C

Authorized By: New Jersey Individual Health Coverage Program Board, Ellen DeRosa, Executive Director.

Authority: N.J.S.A. 17B:27A-2 et seq.

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

Proposal Number: PRN 2014-_____.

As required by N.J.S.A. 17B:27A-16.1, interested parties may testify with respect to the standard health benefits plans set forth in Exhibits A, B, and C of the Appendix to N.J.A.C. 11:20, at a **public hearing** to be held at 9:00 A.M. on October 29, 2014 at the New Jersey Department of Banking and Insurance, 11th floor Conference Room, 20 West State Street, Trenton, New Jersey.

Submit comments by November 7, 2014 to:

Ellen DeRosa

Executive Director

New Jersey Individual Health Coverage Program Board

P.O. Box 325

Trenton, NJ 08625-0325

Fax: 609-633-2030

E-mail: ellen.derosa@dobi.state.nj.us

The agency proposal follows:

Summary

The Individual Health Coverage (IHC) Program was established in accordance with P.L. 1992, c. 161. The IHC Program is administered through a Board of Directors (Board). The primary functions of the IHC Program and its Board are the creation of standard health benefits plans (standard plans) to be offered in the individual market in New Jersey and the regulation of the individual health coverage market. There are five standard plans, which have been established through regulation, and are set forth in Exhibits A and B of the Appendix to N.J.A.C. 11:20, the rules for the IHC Program, along with Exhibit C, which provides explanations of how certain variables in the standard plans may be used by carriers. The following amendments apply to Exhibits A and B.

The IHC Program Board proposes updating the variable text on the schedule pages to illustrate the increase in the maximum 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

[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

the recently published final regulations at 45 C.F.R. 147.160, which cross-references the standards at 45 CFR 146.136, 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 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 IHC 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 45 C.F.R. 146.136(a) given the nature of the treatment.

The IHC Program Board proposes several amendments to address the January 1 through December 31 plan year structure which is recently federally mandated by 45 C.F.R. 144.103 by way of 45 C.F.R. 156.80. New Jersey carriers have historically used an anniversary date structure that resulted in renewals and rate changes coincident with the annual anniversary measured from the effective date. Anniversary date was a defined term within the standard plans. However, the requirement that policies in the individual market provide benefits on a calendar year basis (as described in the definition of policy year at 45 C.F.R. 144.103) effectively negates an anniversary date structure. The IHC Program Board proposes deleting the definition of Anniversary Date from the definition section of the standard plans. The IHC Program Board proposes adding a definition of Renewal Date to mean January 1 of the year immediately following the effective date and each succeeding January 1. The IHC Program

---

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-7.5).

Board proposes corresponding amendments to Term of the Policy - Renewal Privilege - Termination to delete text that referred to annual renewals based on the Effective Date and state that renewals occur on the Renewal Date which is defined as January 1. The amendment also renames the provision as Renewal Privilege- Termination.

The IHC Program Board is proposing to amend the definition of Annual Open Enrollment Period due to a recent federal change pursuant to new guidance. Although the federal rules originally defined the Annual Open Enrollment period as October 15 through December 7 of each year, and the standard plans were revised to include that timeframe in order to be consistent with the federal requirement, 45 C.F.R. 147.104(b)(1)(ii), through reference to 45 C.F.R. 155.410 has since been amended, and the time period for the open enrollment period for 2014 is now November 15, 2014 through February 15, 2015. To avoid potential mismatch in dates between the federal and state requirements in the future, the proposed amendment deletes the specific dates of the annual open enrollment period and refers to the designated period each year. The proposed amendment also explains that the open enrollment period is the time during which a person may enroll in a plan or may replace a current plan with a different plan.

The IHC 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 IHC Board proposes an amendment to the Exclusive Provider Organization provisions to clarify that if a covered person uses a non-selected PCP a higher copayment applies.

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

The IHC 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 CFR 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 IHC 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 IHC Program Board proposes amendments to Term of the Policy - Renewal Privilege - Termination provision such that the timeframes for notices of non-renewal align with the notice requirements set forth in N.J.A.C. 11:20-18.

The IHC Program Board proposes the addition of variable text on the face page of the policy forms to illustrate the personalization of the forms for the policyholder.

The IHC Program Board proposes corresponding amendments to the definition section at N.J.A.C. 11:20-1.2. Specifically, the Board proposes amending the definition of annual open enrollment period. As explained above, although the federal rules originally defined the Annual Open Enrollment period as October 15 through December 7 of each year, and the regulation was revised to include that timeframe in order to be consistent with the federal requirement, 45 C.F.R. 147.104(b)(1)(ii), through reference to 45 C.F.R. 155.410 has since been amended, and the time period for the open enrollment period for 2014 is now November 15, 2014 through February 15, 2015. To avoid potential mismatch in dates between the federal and state requirements in the future, the proposed amendment deletes the specific dates of the annual open enrollment period and refers to the designated period each year. The proposed amendment also explains that the open enrollment period is the time during which a person may enroll in a plan or may replace a current plan with a different plan. Consistent with 45 C.F.R. 144.103 by way of 45 C.F.R. 156.80, the IHC Program Board proposes adding a definition of Renewal Date to mean January 1 of the year immediately following the effective date and each succeeding January 1.

The IHC Program Board proposes amending N.J.A.C. 11:20-24.4(c) to explain the effective date of policy applied for during the annual open enrollment period in the event the period extends beyond December 31 as it does for the period designated for 2014. In such case, the amendment explains that the effective date will be the first of the month following receipt of the application.

The IHC Board proposes amending the text of the standard HMO plan at Exhibit B to include variable provisions to accommodate a high deductible health plan that could be used in conjunction with a health savings account. Such provisions already exist in Exhibit A and are being included in Exhibit B to give HMO carriers the same plan design flexibility already afforded to insurance companies.

IHC Rulemaking Procedures

The IHC Board is proposing these amendments in accordance with the special action process established at N.J.S.A. 17B:27A-16.1, 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-16.1, the IHC Board may expedite adoption of certain actions, including modification of the IHC Program's health benefits plans and policy forms, if the IHC Board provides interested parties a minimum 20-day period during which to comment on the Board's intended action following notice of the intended action in three newspapers of general circulation, with instructions on how to obtain a detailed description of the intended action and the time, place, and manner by which interested parties may present their views regarding the intended action. Concurrently, the IHC Board must forward notice of the intended action to the Office of Administrative Law (OAL) for publication in the New Jersey Register, although the comment period runs from the date the notice is submitted to the newspapers and OAL, not from the date of publication of the notice in the New Jersey Register. The IHC Board also sends 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 IHC Board must allow for testimony to be presented at a public hearing prior to adopting any such modifications. Subsequently, the IHC Board may adopt its intended action immediately upon the close of the

specified comment period or close of a public hearing (whichever is 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. If the Board does not respond to commenters as part of the notice of adoption, the Board will respond to the comments timely submitted within a reasonable period of time thereafter in a separately-prepared report which will be submitted to OAL for publication in the New Jersey Register. Pursuant to N.J.S.A. 17B:27A-51, all actions adopted by the Board are subject to the requirements of this special rulemaking procedure notwithstanding the provisions of the Administrative Procedure Act. As a result, the quarterly calendar requirement set forth at N.J.A.C. 1:30-3.1 is not applicable when the Board uses its special rulemaking procedures.

Social Impact

The IHC 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 IHC Board does not expect any particular social impact as a result of the proposed amendments regarding the renewal date. Although the timing will be very different than consumers have previously experienced and the new timing may result in some consumer confusion, the IHC Board is proposing the amendment to comply with the requirements of federal law.

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 IHC 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 IHC Board understands that some carriers may have considered three-dimensional mammography experimental, and thus, prior to P. 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 IHC Board expects that the amendment to comply with P.L. 2013, c. 196 could result in an economic impact. The IHC 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 IHC Board expects that the amendment to comply with federal 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 IHC 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 IHC Board expects a neutral economic impact as a result of the remaining proposed amendments to the standard plan forms contained in Exhibits A and B. 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

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. These proposed amendments are subject to Federal requirements addressing certain standards for health insurance contracts in PPACA and specifically the standards governing Essential Health Benefits (EHB).

The proposed amendment to the coverage of mammography services continues to be within the 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 (MHPAEA), and the final regulations at 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. IHC Board does not believe the proposed amendments exceed the Federal standards. The amendments the Board proposes to the standard plans are required to implement the various provisions of PPACA and MHPAEA, as discussed above. Consequently, the IHC Board does not believe a Federal standards analysis is required.

Jobs Impact

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

Agriculture Industry Impact

The IHC Board does not believe the proposed amendments, repeals, and new rules will have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The IHC Board does not believe the proposed amendments, repeals, and new rules 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, repeals, and new rules 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 law in question does not vary based on business size of a carrier, and the IHC Board would not be at liberty to make such a distinction even if the IHC Board were to consider such a distinction warranted. Accordingly, the proposed amendments, repeals, and new rules 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, repeals, and new rules.

Housing Affordability Impact Analysis

The IHC Board does not believe the proposed amendments, repeals, and new rules will have an impact on housing affordability in this State in that the proposed amendments, repeals, and new rules relate to the benefit levels and terms of standard health benefits plans offered in New Jersey for purchase by individuals.

Smart Growth Development Impact Analysis

The IHC Board does not believe the proposed amendments, repeals, and new rules will have an impact on the number of housing units or the availability of affordable housing in the State, or that the proposed amendments, repeals, and new rules 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, repeals, and new rules relate to the benefit levels and terms of standard health benefits plans offered in New Jersey.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:20-3.4, 12.2, 12.3, 12.4A, 12.5, and 24.7.

Full text of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

11:20-1.1 Purpose and scope

(No change.)

11:20-1.2 Definitions

Words and terms contained in the Act, when used in this chapter, shall have the meanings as defined in the Act, unless the context clearly indicates otherwise, or as such words and terms are further defined by this chapter.

. . .

"Annual open enrollment period" means [October 15 through December 7 of each year beginning in 2014] **the designated period of time each year during which**

(a) individuals are permitted to enroll in a standard health benefits plan or standard health benefits plan with rider; and

(b) individuals who already have coverage may replace current coverage with a different standard health benefits plans or standard health benefits plan with rider.

.

. . .

“Renewal Date” means January 1 of the year immediately following the Effective Date of a Policy and each succeeding January 1 thereafter.

SUBCHAPTER 24. PROGRAM COMPLIANCE

11:20-24.4 Effective date of coverage

(a)-(b) (No change.)

(c) With respect to applications submitted during the annual open enrollment period, the effective date of coverage shall be January 1 of the following calendar year **if the application is received prior to January 1. Whenever the annual open enrollment period extends beyond December 31, the effective date of coverage shall be the first of the month following the date the application is received. In addition, carrier may permit effective dates as of the 15th of the month.**

(d) (No change.)