

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. 11:20-1.2, 12.4, 24.2A, 24.4 and N.J.A.C. 11:20 Appendix

Exhibits A and B

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 explanation of inapplicability of calendar
requirement.

Proposal Number: PRN 2017-.

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 N.J.A.C. 11:20 Appendix Exhibits A and B at a **public
hearing** to be held at 11:00 a.m. on August 31, 2017, at the New Jersey Department of Banking and
Insurance, 11th floor Conference Room, 20 West State Street, Trenton, New Jersey.

Submit comments by September 6, 2017, to:

Ellen DeRosa

Executive Director

New Jersey Individual Health Coverage Program Board

PO Box 325

Trenton, NJ 08625-0325

Fax: 609-633-2030

E-mail: ellen.derosa@dobi.nj.gov

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 rule, 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 IHC Board proposes to amend the definition of “resident” found at N.J.A.C. 11:20-1.2 to conform to the requirements of 45 CFR 147.104. The requirement to be present in New Jersey at least six months out of each calendar year would be a barrier to guaranteed availability. The IHC Board recognizes that the text was inadvertently retained. The IHC Board notes that neither the Buyer’s Guide nor the standard plans contain the six month requirement.

To comply with the requirements of 45 CFR 155.420(d) as amended most recently by the Market Stabilization Rule, 82 FR 18346, the IHC Board proposes to amend the definition of Triggering Event as found at N.J.A.C. 11:20-1.2, N.J.A.C. 11:20-24.2A(b) and as found in the definitions section of Appendix Exhibits A and B to state that:

1. A marketplace redetermination of eligibility is a triggering event only for marketplace coverage.

2. New dependent triggering events occur when an eligible person “gains or acquires” a dependent and only applies to the eligible person and new dependent(s).
3. Marriage is a triggering event only if one of the spouses had minimum essential coverage for one or more days during the 60 days preceding marriage.
4. An ineligibility determination by NJFamilyCare for an applicant’s application submitted during the open enrollment period or a special enrollment period is a triggering event.
5. Victims of domestic abuse or spousal abandonment who need to enroll separately from the perpetrator of the abuse or abandonment have a triggering event.
6. Gaining access to plans in New Jersey as a result of a permanent move to New Jersey is a triggering event only if the person had minimum essential coverage for one or more days during the 60 days preceding the permanent move. This triggering event encompasses the separate triggering event addressing moving out of the service area.
7. Erroneous findings of eligibility are expanded to address the potential for a finding to have been made by a carrier.
8. Violations of material provisions may be addressed not just to the marketplace but also to the State regulatory agency.

To comply with the requirements of recently enacted P.L. 2017, c. 117, the IHC Board proposes the following amendments to Appendix Exhibits A and B:

1. The IHC Board proposes to replace the existing variable definitions of “telemedicine,” “E-Visit” and “Virtual Visit” with variable definitions of “telemedicine” and “telehealth” consistent with the terms defined in P.L. 2017, c. 117.

2. The Board proposes to revise the specimen schedule page text to delete variable text showing cost sharing for E-Visits, Telemedicine and Virtual Visits and include cost sharing for the newly defined terms Telemedicine and Telehealth and to state that the cost sharing cannot exceed the cost sharing for an applicable in-person visit.
3. The Board proposes to remove the variable coverage of Telemedicine, E-Visits and Virtual Visits from the Practitioner's Charges for Non-Surgical Care and Treatment provision and create a separate variable provision to address coverage of Telemedicine and/or Telehealth. (Appendix Exhibit A only)
4. The Board proposes to remove coverage of Telemedicine, E-Visits and Virtual Visits from item 1 of the Outpatient Services provision and create a new variable item 25 to address coverage of Telemedicine and/or Telehealth. (Appendix Exhibit B only)
5. The Board proposes to revise the telephone consultations exclusion to allow an exception for telemedicine and/or telehealth (Appendix Exhibit A only).

To comply with the requirements of recently enacted P.L. 2017, c. 176, the IHC Board proposes the following amendments:

1. Refer to "Covered Person" rather than "female Covered Person" in Item d of the Preventive Care definition (Appendix Exhibits A and B);
2. Refer to "Covered Person" rather than "female Covered Person" in the Primary Care Provider section of the Point of Services Provisions and Exclusive Provider Organization Provisions (Appendix Exhibit A only);
3. Amend the Specialist Services definition to delete the reference to females. (Appendix Exhibits A and B)

4. Amend the Primary Care Provider definition to delete the reference to females.

(Appendix Exhibit B only)

The IHC Board proposes to amend the specimen schedule pages in Appendix Exhibits A and B to include variable text to allow the inclusion of a coinsurance limit for one or more services subject to coinsurance. The coinsurance limit would cap the covered persons' financial exposure associated with coinsurance for the specific service or services.

The IHC Board proposes to amend the Renewal Privilege – Termination provision of Appendix Exhibit B to delete the sentence that states contract years and contract months are measured from the Effective Date. The sentence was inadvertently retained in the 2014 amendments. As already stated in Appendix Exhibit B, the Renewal Date is the basis for contract years.

The IHC Board proposes to amend N.J.A.C. 11:20-12.4 and N.J.A.C. 11:20-24.4 to state that an open enrollment application must be submitted no later than December 15, consistent with the open enrollment period defined at 45 CFR 155.410.

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-16.1, 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.

Please note that since this procedure allows a 20-day comment period, it is likely the comment period will expire prior to publication of the notice of proposal in the New Jersey Register.

Social Impact

The IHC Board anticipates that compliance with 45 CFR 155.420(d) will have mixed impact. The requirement to have had minimum essential coverage for at least one day during the 60 days prior to marriage or a permanent move may result in some persons not having the opportunity for a special enrollment period to buy an individual plan and thus they will be uninsured. The addition of triggering events will allow additional persons to have a special enrollment period to buy an individual plan.

The IHC Board recognizes that the inclusion of variable text to address P.L. 2017, c. 117 will have social impact only to the extent carriers elect to include the variable text. If carriers choose to include coverage for telemedicine and/or telehealth, there would be a positive social impact for New Jersey residents who would enjoy increased access to providers.

The IHC Board anticipates positive social impact from the amendments to comply with P.L. 2017, c. 176 for persons who identify as a certain gender.

Economic Impact

The IHC Board anticipates that compliance with 45 CFR 155.420(d) will have mixed economic impact. The requirement to have had minimum essential coverage for at least one day during the 60 days prior to marriage or a permanent move may result in some persons not having the opportunity for a special enrollment period to buy an individual plan and thus they will be uninsured. The addition of triggering events will allow additional persons to have a special enrollment period to buy an individual plan.

The IHC Board recognizes that the inclusion of variable text to address P.L. 2017, c. 117 will have an economic impact only to the extent carriers elect to include the variable text. If

carriers choose to include coverage for telemedicine and/or telehealth, there would be a positive economic impact for New Jersey residents who would have coverage for these services that would not otherwise have been covered.

The IHC Board anticipates positive economic impact from the amendments to comply with P.L. 2017, c. 176 for persons who identify as female since they would have coverage for services that would not otherwise have been covered.

To the extent a carrier elects to use the coinsurance limit provision, the additional provision allowing the inclusion of a coinsurance limit will have a positive economic impact in that it will reduce financial exposure covered persons experience for specified covered services.

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, some of the proposed amendments are intended to comply with Federal law, 45 CFR 155.420(d), 45 CFR 147.104 and 45 CFR 155.410. The proposed amendments do not exceed the requirements of 45 CFR 155.420(d), 45 CFR 147.104 or 45 CFR 155.410. 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. 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 IHC Board does not believe the proposed amendments will have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The IHC 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 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 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.

Housing Affordability Impact Analysis

The IHC 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 for purchase by individuals.

Smart Growth Development Impact Analysis

The IHC 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.

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

§ 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.

...

"Resident" means a person whose primary residence is in New Jersey [and who is present in New Jersey for at least six months of each calendar year,] or, in the case of a person who has moved to New Jersey [less than six months before applying for individual health coverage,] who intends to [be present] **establish a primary residence** in New Jersey [for at least six months of each calendar year].

"Triggering event" means an event that results in an individual becoming eligible for a special enrollment period. Triggering events are:

1. The date the eligible person loses eligibility for minimum essential coverage, or the eligible person's dependent loses eligibility for minimum essential coverage, including a loss of coverage resulting from the decertification of a QHP by the marketplace;
2. The date a dependent child's coverage ends as a result of attaining age 26 whether or not the dependent is eligible for continuing coverage in accordance with Federal or state laws;
3. The date a dependent child's coverage under a parent's group plan ends as a result of attaining age 31;
4. The effective date of a marketplace redetermination of an eligible person's subsidy, including a determination that an eligible person is newly eligible or no longer eligible for a subsidy **with respect to marketplace coverage; and for off marketplace coverage the effective date of a marketplace redetermination that an eligible person is no longer eligible for a subsidy;**
5. The date an eligible person [acquires] **gains or becomes** a dependent due to [marriage,] birth, adoption, placement for adoption, or placement in foster care **with respect to the eligible person and new Dependent(s);**
6. **The date an eligible person gains or becomes a dependent due to marriage provided at least one spouse demonstrates having minimum essential coverage for one or more days during the 60 days preceding the date of marriage.**
7. **The date NJFamilyCare determines an applicant whose application was submitted during the open enrollment period or during a special enrollment period is ineligible.**
8. **The date an eligible person and his or her dependent child(ren) who are victims of domestic abuse or spousal abandonment need to enroll for coverage apart from the perpetrator of the abuse or abandonment.**

9. The date an eligible person gains access to plans in New Jersey as a result of a permanent move provided the eligible person demonstrates having minimum essential coverage for one or more days during the 60 days preceding the permanent move.

[6. The date an eligible person who is covered under a standard health benefits plan or standard health benefits plan with rider or group health benefits plan moves out of that plan's service area;]

[7]**10.** The date of a marketplace **or carrier** finding that it erroneously permitted or denied an eligible person enrollment in a QHP;

[8]**11.** The date of the court order that requires coverage of a dependent; and

[9]**12.** The date the eligible person demonstrates to the marketplace **or State regulatory agency** that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee.

Exception: A loss of coverage resulting from nonpayment of premium, fraud, or misrepresentation of material fact shall not be a triggering event.

...

§ 11:20-12.4 Replacement during annual open enrollment period

(a) (No change)

(b) The effective date of the replacement plan will be January 1 of the year following the annual open enrollment period if the application is submitted [prior to January 1] **on or before December 15.**[The effective date with respect to applications submitted later in the open enrollment period will be assigned based on N.J.A.C. 11:20-24.4(b).]

(c) (No change)

§ 11:20-24.2A Triggering events that result in special enrollment periods

(a) (No change).

(b) The dates listed below are triggering events. A loss of coverage resulting from nonpayment of premium, fraud, or misrepresentation of material fact shall not be a triggering event.

1. The date the eligible person loses eligibility for minimum essential coverage, or the eligible person's dependent loses eligibility for minimum essential coverage, including a loss of coverage resulting from the decertification of a qualified health plan (QHP) by the marketplace;
2. The date a dependent child's coverage ends as a result of attaining age 26 whether or not the dependent is eligible for continuing coverage in accordance with Federal or State laws;
3. The date a dependent child's coverage under a parent's group plan ends as a result of attaining age 31;
4. The effective date of a marketplace redetermination of an eligible person's subsidy, including a determination that an eligible person is newly eligible or no longer eligible for a subsidy **with respect to marketplace coverage; and for off marketplace coverage the effective date of a marketplace redetermination that an eligible person is no longer eligible for a subsidy;**
5. The date an eligible person [acquires] **gains or becomes** a dependent due to [marriage,] birth, adoption, placement for adoption, or placement in foster care **with respect to the eligible person and new Dependent(s);**
6. **The date an eligible person gains or becomes a dependent due to marriage provided at least one spouse demonstrates having minimum essential coverage for one or more days during the 60 days preceding the date of marriage;**

7. The date NJFamilyCare determines an applicant whose application was submitted during the open enrollment period or during a special enrollment period is ineligible;

8. The date an eligible person and his or her dependent child(ren) who are victims of domestic abuse or spousal abandonment need to enroll for coverage apart from the perpetrator of the abuse or abandonment;

9. The date an eligible person gains access to plans in New Jersey as a result of a permanent move provided the eligible person demonstrates having minimum essential coverage for one or more days during the 60 days preceding the permanent move;

[6. The date an eligible person who is covered under a standard health benefits plan or standard health benefits plan with rider or group health benefits plan moves out of that plan's service area;]

[7]**10.** The date of a marketplace **or carrier** finding that it erroneously permitted or denied an eligible person enrollment in a QHP;

[8]**11.** The date of the court order that requires coverage of a dependent; and

[9]**12.** The date the eligible person demonstrates to the marketplace **or State regulatory agency** that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee.

(c) (No change)

§ 11:20-24.4 Effective date of coverage

(a) (No change)

(b) 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] **submitted on or before December 15**. [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, a carrier may permit effective dates as of the 15th of the month.]

(c) (No change)

APPENDIX

OFFICE OF ADMINISTRATIVE LAW NOTE: The New Jersey Individual Health Coverage Program Board is proposing amendments to N.J.A.C. 11:20 Appendix Exhibits A and B. 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 Individual Health Coverage Program

20 West State Street, 11th Floor

PO Box 325

Trenton, NJ 08625-0325

or

New Jersey Office of Administrative Law

9 Quakerbridge Plaza

PO Box 049

Trenton, NJ 08625-0049