INSURANCE
NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

Individual Health Coverage Program

Proposed Amendments: N.J.A.C. 11:20-3.1(b), and N.J.A.C. 11:20 Appendix Exhibits C, D and T.

Authorized By: New Jersey Individual Health Coverage Program Board, Wardell Sanders, Executive Director.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2004-

A **public hearing** on the proposed changes to the specimen policy form will be held on January 18, 2005 at 9:30 a.m. at the following location:

Room 218
Mary Roebling Building
20 West State Street
Trenton, NJ

Please call the IHC Board at 609.633.1882x50302 prior to the hearing date if you wish to be included on the list of speakers.

Submit written comments by January 18, 2005 to:

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The agency proposal follows:

Summary

Section 1202 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-175, added section 223 to the Internal Revenue Code. The law permits

eligible individuals to establish Health Savings Accounts (HSAs) as of January 1, 2004. HSAs are trusts or custodial accounts, owned by individuals, that receive tax-favored contributions that may be accumulated over the years or distributed on a tax-free basis to pay or reimburse qualifying medical expenses. To be eligible to establish a HSA, an individual must be enrolled in a high deductible health plan (HDHP), must not be covered by another HDHP (with certain exceptions for plans providing limited coverage), must not be entitled to Medicare benefits, and may not be claimed as a dependent on another person's tax return.

Under the Internal Revenue Code, a HDHP is defined as a health insurance plan that has an annual deductible of at least $1,000 and an annual out-of-pocket limit of not more than $5,000 for individual coverage. For family coverage, a HDHP must have an annual deductible of at least $2,000 and an annual out-of-pocket limit of not more than $10,000. Such amounts are subject to cost-of-living adjustments. A HDHP may exempt certain preventive care from the deductible but may not provide benefits in any year for any non-preventive care until the deductible for that year is satisfied. 26 U.S.C. § 223(c)(2).

New Jersey law requires that treatment of lead poisoned children be covered in health benefits plans without application of deductible in all plans. See P.L. 1995. c. 316, codified for the individual market at N.J.S.A. 17B:27A-7e(1). Under federal law, a HDHP may only exempt preventive care from application of deductible. However, Treasury Notice 2004-43, published by the Internal Revenue Service on July 6, 2004, provides that HDHPs that exempt non-preventive care from deductible because of state mandated benefit laws will still be treated as qualifying under section 223(c)(2) and that eligible individuals covered under such plans may contribute to a HSA through December 31, 2005. States are therefore being provided with a transition period lasting until December 31, 2005 to modify their mandated benefits laws so that a deductible applies to non-preventive care. Accordingly, New Jersey's lead treatment mandate

currently is not a bar to the establishment of HSAs but must be modified by January 1, 2006, if HSAs are to continue to be made available after that date.

Currently, none of the standard plans in the individual health coverage (IHC) market qualify as a HDHP, and the IHC law does not permit a carrier to file an optional benefit rider to modify the plan. In light of the recent Treasury Notice providing transitional relief as described above, the IHC Board is proposing amendments to the standard plans that will permit them to qualify as HDHPs.

The Board proposes to amend N.J.A.C. 11:20-3.1(b) to specify single and other than single deductible amounts and out of pocket amounts that would satisfy the requirements for a HDHP. The Board proposes to amend the Schedule of Benefits page and the Benefit Deductibles, Copayments and Coinsurance provision of Plans C and D, as they appear in Appendix Exhibits C and D of N.J.A.C. 11:20, to address both the dollar amounts of the deductible as well as the method in which the other than single deductible is accumulated, and the calculation of the out of pocket maximum. The Explanation of Brackets, as set forth at Appendix T of N.J.A.C. 11:20, is being amended to accommodate the variable text being added to Plans C and D.

IHC Rulemaking Procedures

The IHC Board proposes these amendments pursuant to the procedures set forth in N.J.S.A. 17B:27A-16.1, which provide a special procedure whereby the IHC Board may adopt certain actions. Pursuant to this procedure, the Board is required to publish notice of its intended action in three newspapers of general circulation, which notice shall include procedures for obtaining a detailed description of the intended action and the time, place and manner by which interested persons may present their views regarding the intended action. Notice of the intended action also is required to be sent to affected trade and professional associations, carriers, and

other interested persons who may request such notice. Concurrently, the Board is required to forward the notice of the intended action to the Office of Administrative Law ("OAL") for publication in the New Jersey Register. The Board must provide a minimum 20-day period for all interested persons to submit their written comments on the intended action to the Board.

Pursuant to N.J.S.A. 17B:27A-16.1, the Board may adopt its intended action immediately upon the close of the specified comment period by submitting the adopted action to the OAL. If the Board elects to adopt the action immediately upon the close of the comment period, it shall nevertheless respond to the comments timely submitted within a reasonable period of time thereafter. The Board shall prepare a report for public distribution, and publication by the OAL in the New Jersey Register. The report shall include a list of commenters, their relevant comments, and the Board's responses.

Please note that the unique provisions of N.J.S.A. 17B:27A-16.1 may result in the publication of this rule proposal in the *New Jersey Register* after the comment period has begun.

Social Impact

The proposed changes may encourage more people to move to high deductible plan options because of the tax saving possibilities, and may encourage some consumers to purchase individual plans that are not currently in the market. Proponents of HSAs believe that the accounts help contain costs by creating financial incentives to avoid inappropriate or over-utilization of services. Opponents of HSAs and high deductible plans believe that cost-shifting may result in less care or delays in appropriate and needed care that would ultimately result in poorer health outcomes and even higher costs.

Because lower cost sharing plans have not proven to be sustainable in the individual health insurance market, the IHC Board has already promulgated a number of high deductible plan options in order to have plans with more reasonable premiums. The proposed rule, in

effect, simply allows New Jersey consumers that can afford to fund an HSA, a tax advantage, perhaps making the coverage more affordable and thus covering more New Jersey residents in this market.

Economic Impact

The IHC Board anticipates that the proposed amendments and new provisions will have an economic impact on persons eligible for individual coverage who are also eligible for an HSA. The amount contributed to the HSA is not taxed and interest earned thereon is not taxed. Contributions to an HSA can be deducted from a person's income even when a person does not itemize; this is often called an "above-the-line deduction." Currently, an individual deduction of up to $2,600 and a family deduction of up to $5150 are permitted.

The proposed amendments may have an impact on a carrier that chooses to make such a product available. For carriers seeking an exemption from loss assessments, any additional non-group enrollment generated by this plan option will reduce the carrier's assessment liability.

Federal Standards Statement

The standard individual health benefits plans comply with the Federal Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191. The standard plans, and the rules describing the standard plans, do not expand upon the requirements set forth in the Federal law.

Jobs Impact

The proposed amendments and new rule are not expected to result in the generation or loss of jobs in the State if they were to take effect.

Agriculture Industry Impact

The proposed amendments and new rule have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The Board believes that all carriers subject to these rules have in excess of 100 employees or are located outside of the State of New Jersey. Therefore, a regulatory flexibility analysis is not required. However, to the extent that any carrier might be considered a small business under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the following analysis applies.

The proposed amendments are optional. Only carriers wising to make a HDHP available are required to do so. The changes herein merely provide the appropriate contractual language.

Smart Growth Impact Statement

The proposed new rules will have no impact on the achievement of smart growth and implementation of the State Plan.

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

11:20-3.1 The standard health benefits plans

(a) No change

(b) In accordance with N.J.A.C. 11:20-1.3, members that offer individual health benefits plans in this State shall offer standard health benefits Plans A/50, B, C, and D as set forth in Exhibits U, and B through D, respectively, with variable text as specified on the Explanation of Brackets, Exhibit T, in the Appendix.

1. Members offering Plan D shall offer the following annual deductible options to the policyholder for each plan:

i. $500.00 per individual and $1,000 per family unit;

ii. $1,000 per individual and $2,000 per family unit;

2. Members offering Plans A/50, B and C shall offer the following annual deductible options to the policyholder for each plan:

i. $1,000 per individual and $2,000 per family unit; and

ii. $2,500 per individual and $5,000 per family unit.

3. Members offering Plans C and D may offer those plans, on a guaranteed issue basis, with **[either or both of]** the following annual deductible options to the policyholder in addition to those deductible options listed in (b)1 and 2 above:

i. $1,500, or effective January 1, 1999, the lowest inflation-adjusted amount for the calendar year in which the coverage is issued or renewed, determined by the Federal Internal Revenue Service pursuant to § 220 of the Internal Revenue Code**,** per individual, or in the case of a family unit, $3,000, or effective January 1, 1999, the lowest inflation-adjusted amount for the calendar year in which the coverage is issued or renewed, determined by the Federal Internal Revenue Service pursuant to § 220 of the Internal Revenue Code per family unit;

ii. $2,250, or effective January 1, 1999, the highest inflation-adjusted amount for the calendar year in which the coverage is issued or renewed, determined by the Federal Internal Revenue Service pursuant to § 220 of the Internal Revenue Code per individual, or in the case of a family unit, $4,500, or effective January 1, 1999**,** the highest inflation-adjusted amount for the calendar year in which the coverage is issued or renewed, determined by the Federal Internal Revenue Service pursuant to § 220 of the Internal Revenue Code per family unit; **and**

iii. Effective January 1, 2005, the lowest inflation-adjusted amount for the calendar year in which the coverage is issued or renewed, determined by the Federal Internal Revenue Service pursuant to § 223 of the Internal Revenue Code, per individual, or in the case of a family unit, the lowest inflation-adjusted amount for the calendar year in

which the coverage is issued or renewed, determined by the Federal Internal Revenue Service pursuant to § 223 of the Internal Revenue Code, per family unit; and

iv. Effective January 1, 2005, the highest inflation-adjusted amount for the calendar year in which the coverage is issued or renewed, determined by the Federal Internal Revenue Service pursuant to § 223 of the Internal Revenue Code, per individual, or in the case of a family unit, the highest inflation-adjusted amount for the calendar year in which the coverage is issued or renewed, determined by the Federal Internal Revenue Service pursuant to § 223 of the Internal Revenue Code, per family unit.

(c)-(e) no change.

_____ Date: _____

Wardell Sanders, Executive Director