

**INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF INSURANCE**

**Small Employer Health Benefits Program**

**Proposed Readoption: N.J.A.C. 11:21-7A, 9 and 13 and 11:21 Appendix Exhibits BB, FF and GG**

**Proposed Readoption with Amendments: N.J.A.C. 11:21-11, 15, 16 and 19**

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17B:27A-17 et seq.

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

Proposal number: PRN 2003-396

Submit comments by December 5, 2003 to:

Douglas A. Wheeler  
Assistant Commissioner  
Legislative and Regulatory Affairs  
Department of Banking and Insurance  
P.O. Box 325  
Trenton, NJ 08625-0325  
Fax: 609-292-0896  
E-mail: [legsregs@dobi.state.nj.us](mailto:legsregs@dobi.state.nj.us)

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 11:21 expires on September 25, 2003. In accordance with N.J.S.A. 52:14B-5.1c, this expiration date of N.J.A.C. 11:21-7A, 9, 11, 13, 15, 16 and 19 is extended to March 23, 2004. Some of the subchapters contained within this chapter were promulgated by the Department of

Banking and Insurance (Department); the remainder by the Small Employer Health Benefits Program Board (SEH Board). As required by the Executive Order, the Department has reviewed those subchapters it promulgated and has determined that they are necessary, reasonable and proper for the purpose for which they were originally promulgated.

The readoption of N.J.A.C. 11:21-7A is necessary because it implements the loss ratio and refund reporting requirements of the New Jersey Small Employer Health Benefits Law, P.L. 1992, c. 162 (N.J.S.A. 17B:27A-17 et seq.).

The readoption of N.J.A.C. 11:21-9 is necessary because it requires all Small Employer Benefits Program carriers (SEH carriers) to file with the Commissioner of the Department an informational rate filing which includes premium and rating methodology information for all health benefits plans offered under the SEH Program.

The readoption of N.J.A.C. 11:21-11 is necessary because it contains procedures and standards for approval of all nonstandard health benefits plans offered under the SEH Program. The Department is also proposing an amendment to this subchapter to include a statutory citation in N.J.A.C. 11:21-11.11, which identifies the Department's statutory authority to impose fines and penalties. Additionally, the Department is deleting language at N.J.A.C. 11:21-11.11 that is dated and no longer necessary.

The readoption of N.J.A.C. 11:21-13 is necessary because it sets forth the criteria and procedures for a carrier to withdraw a nonstandard health benefits plan.

The readoption of N.J.A.C. 11:21-15 is necessary because it contains the informational and procedural requirements for carriers to request relief from certain

obligations required by the SEH law, such as paying assessments and offering coverage to small employers. The Department is also proposing an amendment to this subchapter to include a statutory and regulatory citations in N.J.A.C. 11:21-15.11, which identify the Department's specific statutory authority to impose fines and penalties.

The readoption of N.J.A.C. 11:21-16 is necessary because it contains the requirements and procedures for carriers intending to withdraw from the small employer market. The Department is proposing amendments to Subchapter 16 establishing requirements and procedures by which carriers may cease to issue and nonrenew certain standards plans, plan options, benefit riders, and copayment/deductible options. Withdrawal of a particular plan type is specifically authorized by the Small Employer Health Benefits Law at N.J.S.A. 17B:27A-23h.

The readoption of N.J.A.C. 11:21-19 is necessary because it requires small employer carriers to submit to the Department the data that is necessary to annually publish an SEH Program Premium Comparison Survey pursuant to the SEH law at N.J.S.A. 17B:27A-33g. The Department is also proposing an amendment to this subchapter to include a statutory citation in N.J.A.C. 11:21-19.4, which identifies the Department's statutory authority to impose fines and penalties.

The Department is additionally proposing for readoption the exhibits contained in the Appendix to Chapter 21 that relate to the subchapters being proposed for readoption and/or amendment. These exhibits include Exhibit GG, which is a loss ratio report form filed annually by carriers with the Department pursuant to N.J.A.C. 11:21-7A. The Department is also proposing to readopt Parts 3, 4 and 5 of Exhibit BB, which contain

certain checklist and certification forms to be filed by carriers with the Department pursuant to N.J.A.C. 11:21-11. Also, the Department is proposing to readopt Exhibit FF, which is a premium comparison survey form required to be filed by carriers with the Department pursuant to N.J.A.C. 11:21-19.

Readoption of the remaining subchapters in Chapter 21 will be proposed separately by the New Jersey Small Employer Health Benefits Program Board in a future issue of the New Jersey Register, and completion of the readoption process will be coordinated between the agencies.

This notice of proposal is not required to be referenced in a rulemaking calendar since a public comment period of 60 days is being provided. See N.J.A.C. 1:30-3.3(a)5.

#### **Social Impact**

The readoption of these subchapters of N.J.A.C. 11:21, which established the SEH Program under which all small employer carriers in New Jersey must offer standard health benefits plans, will continue to have a favorable impact on New Jersey small employers and their employees. Small employers will continue to have access to a greater variety of carriers offering small employer health benefits in the State, and the requirement that carriers offer only the health benefits plans designed by the SEH Program Board will enable small employers to continue to readily compare price among carriers. Further, carriers will continue to be obligated to provide small employer health benefit plans on a guaranteed issue basis, with plans subject to guaranteed renewability,

modified community rating and limitations as to the imposition of a pre-existing conditions exclusion.

The proposed amendments at N.J.A.C. 11:21-16, which establish requirements for a carrier's withdrawal of certain plans, plan options, benefit riders and copayment/deductible options, may unfavorably impact consumers in that a particular plan or option that has been provided to certain small employer groups may be removed from the market. However, granting carriers the flexibility to withdraw certain plans and options may preclude some carriers from exiting the market entirely or refusing to enter the market.

### **Economic Impact**

The rules proposed for readoption with amendments will continue to have a substantial economic impact on carriers offering small employer health benefits plans in this State. Member carriers will continue to be required to bear the costs associated with complying with the requirements of these rules. All of these costs, however, are attendant to the continued implementation of the comprehensive reforms of the Small Employer Health Benefits Act, and are far outweighed by the long-term benefits to carriers, small employers and their employees covered by one of the standard SEH plans.

Small employers will be impacted indirectly in that the regulatory requirements placed on carriers will enable small employers to continue to experience the advantages of the health benefits plans established in the small group market.

The Department will continue to be required to bear the costs of reviewing all filings submitted by carriers in complying with this chapter, but does not anticipate any new or additional costs as a result of any amendments to the rules contained in this chapter.

The Department does not believe that insureds will experience any direct adverse economic impact resulting from the subchapters being proposed for readoption.

Carriers will likely experience a favorable impact as a result of the proposed amendments to N.J.A.C. 11:21-16. By permitting carriers to withdraw from the market certain plans and options currently offered to only a handful of small employer groups, carriers' administrative costs will be reduced. Moreover, this reduction in costs may additionally result in reduced premiums, thereby favorably impacting small employer groups.

#### **Federal Standards Statement**

The rules proposed for readoption with amendments comply with the Federal Health Insurance Portability and Accountability Act of 1996, Pub.L. 104-191 and do not expand upon the requirements set forth in the Federal law.

#### **Jobs Impact**

The Department does not anticipate the creation or loss of any jobs as a result of rules proposed for readoption with amendments.

### **Agriculture Industry Impact**

The Department does not believe that the rules proposed for re-adoption with amendments will have any impact on the agriculture industry in New Jersey.

### **Regulatory Flexibility Analysis**

The rules proposed for re-adoption with amendments apply to all carriers that are members of the Small Employer Health Benefits Program. Some of these entities may be “small businesses” as defined in the Regulatory Flexibility Act at N.J.S.A. 52:14B-16 et seq. All carriers to whom these rules apply are required to bear any costs associated with complying with the requirements of the rules. The requirements and costs are discussed under the Summary and Economic Impact above. Additionally, the Department does not believe that carriers will be required to utilize or employ any additional professional services in order to comply with the re-adopted rules with amendments. To the extent that these rules apply to small businesses, they may have a greater impact in that small businesses may be required to devote proportionately more staff and financial resources to achieve compliance. The Department believes, however, that any additional costs would not pose an undue burden because the information required is readily available to carriers.

The Small Employer Health Benefits Act provides no different compliance requirements based on business size. The rules at N.J.A.C. 11:21 establish procedures and standards for carriers to meet their obligations pursuant to the Act, and the fair, reasonable and equitable administration of the SEH Program pursuant to N.J.S.A.

17B:27A-17 et seq. Accordingly, these repropoed rules provide no differentiation in compliance requirements based on business size.

### **Smart Growth Impact**

The rules proposed for readoption with amendments have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

**Full text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:21-7A, 9, 11, 13, 15, 16, and 19 and Appendix Exhibits BB, FF and GG.

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

SUBCHAPTER 11. NONSTANDARD HEALTH BENEFITS PLANS (FILINGS WITH THE COMMISSIONER): REQUIREMENTS FOR MAINTAINING NONSTANDARD PLANS

11:21-11.11 Penalty and fines

[A] **Pursuant to N.J.S.A. 17B:27A-43, a** carrier failing to comply with the requirements of this subchapter shall be subject to payment of a fine **of** not less than \$2,000 nor more than \$5,000 per violation. [Except for plans issued through an out-of-State trust, no fine or other penalty shall be assessed against a carrier with nonstandard



health benefits plans specified at N.J.A.C. 11:21-11.4 for failure to comply specifically with this subchapter until May 16, 1997, and with the exception of plans issued through an out-of-State trust, all carriers with nonstandard health benefits plans as specified at N.J.A.C. 11:21-11.4 shall have the opportunity to come into compliance with this subchapter without penalty by May 16, 1997. This provision shall not effect any penalty or fine made against a carrier prior to the effective date of this subchapter.]

SUBCHAPTER 15. RELIEF FROM OBLIGATIONS IMPOSED UNDER THE SMALL  
EMPLOYER HEALTH BENEFITS PROGRAM

11:21-15.11 Penalties

Failure to comply with this subchapter, including all notice requirements set forth herein, may result in the denial of relief requested and imposition of penalties [as authorized by law, including any actions that may be taken by the Board,] pursuant to [N.J.S.A. 17B:27A-17 et seq.] **N.J.S.A. 17B:27A-43** and the SEH Program Plan of Operation **as codified at N.J.A.C. 11:21-2**, including, but not limited to, imposition of an interest penalty for assessments due from the member and a recommendation by the Board to remove the member's authority to issue any health benefits plans in this State.

SUBCHAPTER 16. WITHDRAWALS [OF SMALL EMPLOYER CARRIERS] FROM THE SMALL EMPLOYER HEALTH BENEFITS PLANS MARKET **AND WITHDRAWALS OF PLAN(S), PLAN OPTION(S) AND COPAYMENT/DEDUCTIBLE OPTION(S)**

11:21-16.1 Purpose and scope

(a) The purpose of this subchapter is to establish the requirements and procedures by which carriers may cease doing business in the small employer market in this State. **Additionally, this subchapter establishes the requirements and procedures by which carriers may cease issuing and nonrenew: a specific standard plan issued using a particular delivery option; a plan option; a specific standard benefit rider; or a specific copayment/deductible option available under the standard plans.** The subchapter applies to all small employer carriers issuing or renewing policies [of] **or** contracts after November 30, 1992. Pursuant to the provisions of N.J.S.A. 17B:27A-17 et seq., every policy or contract issued to a small employer in this State shall be renewable with respect to all eligible employees or dependents at the option of the policy or contractholder or small employer, except under the circumstances prescribed by N.J.S.A. 17B:27A-23 a, c, d, e, f, h, and i. One of the circumstances delineated therein is where a carrier ceases to do business in the small employer health benefits plans market in New Jersey pursuant to N.J.S.A. 17B:27A-23e.

(b) (No change.)

## 11:21-16.2 Definitions

Words and terms, when used in this subchapter, shall have the meanings set forth in the Act or at N.J.A.C. 11:21-1.2 unless defined below or unless the context clearly indicates otherwise:

**"Market withdrawal" means the nonrenewal on the anniversary date of all in force nonstandard health benefits plans or small employer health benefits plans, or both as appropriate, issued to small employers without offering replacement with a small employer health benefits plan (or a nonstandard health benefits plan, if offered through an association, multiple employer arrangement or out-of-State trust that continues to market its nonstandard health benefits plans pursuant to N.J.S.A. 17B:27A-17 et seq.), except where such action is taken pursuant to N.J.S.A. 17B:27A-23a, c, d, f, h and i or is approved by the Commissioner in accordance with N.J.A.C. 11:21-11.**

**"Plan option withdrawal" means a carrier's cessation of the issuance of a standard health benefits plan option and the nonrenewal on the anniversary date of all inforce standard small employer health benefits plans issued with that option.**

**"Plan withdrawal" means a carrier's cessation of the issuance of a standard health benefits plan and the nonrenewal on the anniversary date of all inforce small employer health benefits plans of that plan type.**

["Withdraw" or withdrawal" means the nonrenewal on the anniversary date of all in force nonstandard health benefits plans or small employer health benefits plans, or both as appropriate, issued to small employers without offering replacement with a small employer health benefits plan (or a nonstandard health benefits plan, if offered through an association, multiple employer arrangement or out-of-State trust that continues to market its nonstandard health benefits plans pursuant to P.L. 1994, c.11), except where such action is taken pursuant to N.J.S.A. 17B:27A-23a, c, d, f, h and i or is approved by the Commissioner in accordance with N.J.A.C. 11:21-11.]

11:21-16.3 General provisions **for market withdrawal**

(a) - (h) (No change.)

11:21-16.4 Restrictions on writings **following a market withdrawal**

Any small employer carrier that ceases to do business pursuant to this subchapter shall be prohibited from writing new business in the New Jersey small employer market for a period of five years from the date of termination of the last health benefits plan nonrenewed under this subchapter.

**11:21-16.5 General provisions for withdrawal of plan, plan option and copayment/deductible option**

**(a) No carrier shall cease to issue or nonrenew a standard small employer health benefits plan, plan option or copayment/deductible option**

required or permitted to be offered pursuant to N.J.A.C. 11:21-3 until the carrier submits a notice of intent to withdraw a plan, plan option or copayment/deductible option with the Commissioner in accordance with the provisions of this subchapter.

(b) A carrier may cease to issue and nonrenew a standard small employer health benefits plan pursuant to this section only if:

1. The copayment/deductible option is not required to be offered pursuant to N.J.A.C. 11:21-3.1(b) or (c); or

2. In the case of a copayment/deductible option required to be offered pursuant to N.J.A.C. 11:21-3.1, the carrier meets its obligation to offer the standard small employer plans and required copayment/deductible options either by offering the plans as indemnity plans or by making the plan or plans available through or in conjunction with a selective contracting arrangement to all New Jersey small employer groups.

(c) A carrier may cease to issue and nonrenew a standard plan option pursuant to this section by offering another approved plan option. Examples of plan options include, but are not limited to, a carrier's option to calculate the family deductible based on a two times individual or three times aggregate basis, and an HMO's option to offer prescription drug coverage with either a \$15.00 copayment or with 50 percent coinsurance.

(d) A carrier that seeks to withdraw a plan, plan option or copayment/deductible option pursuant to this section shall provide the

Commissioner with written notification of its intent to withdraw a plan, plan option or copayment/deductible option. An original and two copies of the notice of intent to withdraw a plan, plan option or copayment/deductible option shall be sent to the attention of: SEH Withdrawal Notice, Life and Health Division, New Jersey Department of Banking and Insurance, P. O. Box 325, Trenton, New Jersey 08625-0325, and shall include the following information:

1. The name of the carrier;

2. The name, address, telephone number, and fax number of the carrier's representative responsible for the application for plan, plan option or copayment/deductible option withdrawal;

3. A specific description of the reasons the carrier is withdrawing the plan, plan option or copayment/deductible option;

4. Copies of a nonrenewal notice the applicant intends to send to its policy or contractholders. Nonrenewal notices for policy or contract holders shall include the following information:

i. A statement that the carrier has elected to nonrenew the plan, plan option or copayment/deductible option;

ii. The date upon which the plan, plan option or copayment/deductible option shall be nonrenewed;

iii. A statement that the plan, plan option or copayment/deductible option is being nonrenewed under the authority of this subchapter;

iv. A statement that the policy or contractholder may contact his or her producer, if any, for additional information regarding the plan, plan option or copayment/deductible option withdrawal; and

v. The name, address and telephone number of the employee or agent of the carrier who may be contacted for assistance and information regarding the plan, plan option or copayment/deductible option withdrawal; and

5. Copies of the proposed nonrenewal notices the applicant intends to send to its producers. Nonrenewal notices for producers shall contain the same information as the notices to policy and contract holders.

(e) The Commissioner shall review the notice of intent to withdraw a plan, plan option or copayment/deductible option to determine whether it complies with the filing requirements of (d) above. The Commissioner shall notify the carrier, in writing, of any deficiencies and the requirements that are necessary to bring it into compliance with this section.

(f) A carrier which has submitted a notice of intent to withdraw a plan, plan option or copayment/deductible option shall:

1. Not more than 60 days after the date of the notice of intent to withdraw the plan, plan option or copayment/deductible option, cease issuing

the standard small employer health benefits plan, plan option or copayment/deductible option;

2. Not more than 60 days following the date of notice of intent to withdraw the plan, plan option or copayment/deductible option, and not less than 90 days in advance of the effective date of the nonrenewal on the anniversary date of the plan, plan option or copayment/deductible option, mail a notice, in the same format submitted to the Commissioner pursuant to (d)4 above, to every policy or contract holder, informing the policy or contract holder that the plan, plan option or copayment/deductible option will be nonrenewed on the plan's anniversary date.

3. Following the initial notice to each policy or contractholder, send a subsequent notice of the nonrenewal to each policy or contractholder which notice shall be included with a monthly premium bill or premium notice issued prior to the date of nonrenewal, or, where no monthly premium is transmitted, send a notice at least 30 days prior to nonrenewal; and

4. Not less than 90 days in advance of the effective date of the nonrenewal on the anniversary date of the plan, plan option or copayment/deductible option, mail a notice in the same format submitted to the Commissioner pursuant to (d)5 above, to the producer of record, if any. For each policy or contract.



Recodify existing N.J.A.C. 11:21-16.5 through 16.7 as **16.6 through 16.8** (No change in text.)

SUBCHAPTER 19. SEH PROGRAM PREMIUM COMPARISON SURVEY

11:21-19.4 Penalties

Failure to comply with the requirements of this subchapter may result in the imposition of penalties as authorized by [law, including, but not limited to, penalties set forth in N.J.S.A. 17B:27A-17 et seq.] **N.J.S.A. 17B:27A-43.**

inoregs/bbseh21