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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 through 56.

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

Proposal Number: PRN 2025-002.

As required pursuant to 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** using Zoom to be held on December 9, 2024, at 11:00 A.M. The
meeting can be accessed at: [https://www.zoomgov.com/j/1613547251?
pwd=RhizTaPa4nQG1Sny3M6pDbIbtGVxIT.1](https://www.zoomgov.com/j/1613547251?pwd=RhizTaPa4nQG1Sny3M6pDbIbtGVxIT.1).

Meeting ID: 161 354 7251

Passcode: 144070

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Submit comments by December 16, 2024, to:

New Jersey Small Employer Health Benefits Program Board
PO Box 325

Trenton, NJ 08625-0325

Fax: 609-633-2030

Email: jhcsehprograms@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 at P.L. 1992, c. 162 (codified
at N.J.S.A. 17B:27A-17 through 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 evidence of coverage at N.J.A.C. 11:21 Appendix.
Specifically, the language for the policy forms for the standard plans
known as Plans B, C, D, and E are at Exhibit F of the Appendix, while the
language of the certificates is at Exhibit W; and the language for the
contract form for the HMO Plan is at Exhibit G, while the language for
the HMO evidence of coverage is at 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 at N.J.A.C. 11:21 Appendix Exhibits F, G, W, and Y (standard plan
documents).

To comply with P.L. 2023, c. 275, which updates coverage for hearing
aids to one hearing aid for each hearing-impaired ear every 24 months and
expands coverage to include charges for the cost of treatment related to
cochlear implants, the Board proposes amendments to the "Hearing Aids"

provision. In addition, the definition of durable medical equipment has
been amended to remove references to hearing aids, as all medically
necessary services incurred in the purchase of a hearing aid will be subject
to the same deductible, coinsurance, or copayment as a primary care visit,
and are not considered durable medical equipment.

To comply with P.L. 2023, c. 105, which places a flat cap on the out-
of-pocket contribution for any covered person prescribed insulin, an
epinephrine auto-injector device, or a prescription asthma inhaler across
insurance providers and mandates coverage for diabetes self-management
education, the Board proposes amendments throughout the standard plan
documents. The schedule pages for each standard plan have been amended
to clearly state that insulin, prescription asthma inhalers, and epinephrine
auto-injector devices are not subject to any deductible and to specify that
copayments cannot exceed the statutory maximum for insulin,
prescription asthma inhalers, and epinephrine auto-injector devices. The
Board proposes the addition of a "Treatment of Diabetes" provision,
which provides coverage for the expenses incurred for certain equipment
and supplies for the treatment of diabetes and the expenses incurred for
diabetes self-management education. The Board proposes the inclusion of
"blood glucose monitors and blood glucose monitors for the legally blind;
test strips for glucose monitors and visual reading and urine testing strips;
insulin; injection aids; cartridges for the legally blind; syringes; insulin
pumps and appurtenances thereto; insulin infusion devices; and oral
agents for controlling blood sugar" pursuant to the Prescription Drugs
provision and the Non-Prescription Drugs provision. The Board proposes
additional language pursuant to the Prescription Drugs provision that
expressly states that the cost-sharing limitations set forth at P.L. 2023, c.
105 (Chapter 105), are not applicable to these specified prescriptions
through a high deductible health plan, and that these prescription drugs
are subject to the minimum deductible permitted pursuant to section
223(c)(2)(A) of the Internal Revenue Code.

The Board is proposing changes throughout the standard plan
documents to implement P.L. 2023, c. 194, the "Small Business Health
Insurance Affordability Act" (the Act), which among several items,
requires small employer health benefits plans issued pursuant to N.J.S.A.
17B:27A-17 et seq., to impose no additional limitations on copayments,
coinsurance, or deductibles beyond those set forth in the 2010 Federal
Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (the
ACA). Prior to the passage of the Act, the standard plan documents
referred carriers to N.J.A.C. 11:22-5.5, which provides network
copayments for services and prescription drugs. These references are
being stricken from the standard plan documents and are being replaced
with a reference to the Federal actuarial value calculator, which is
consistent with the ACA and Bulletin No. 24-08 issued by the New Jersey
Department of Banking and Insurance. The Board is proposing
amendments to the out-of-pocket maximum provision of the standard plan
documents, consistent with the ACA. P.L. 2023, c. 194 (Chapter 194),
also permits carriers offering small employer plans to offer prescription
coverage using a closed formulary. In order to permit a carrier to elect
whether or not a plan will offer a closed formulary, the Board is proposing
the inclusion of a new variable "Covered Drug" provision.

In addition, to ensure that regulations are current, the Board is
proposing amendments that remove references to P.L. 2017, c. 117, which
pertains to telehealth and telemedicine services in this State and replaces
those references with the appropriate statutory citation, N.J.S.A. 45:1-61
through 66. The Board is proposing amendments to the Virtual Primary
Care provision, allowing carriers to elect whether a deductible,
copayment, or coinsurance will be applied to virtual primary care services.
The Board is proposing to amend the definition of "inpatient services" to
include a covered person's home when admitted pursuant to the Hospital
at Home Act, which permits a hospital to provide acute care services to an
individual outside of the hospital's licensed facility and within a private
residence designated by the individual, consistent with P.L. 2023, c. 163.

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 the 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 the OAL for publication in the New Jersey Register.

As 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 at N.J.S.A. 17B:27A-51 may result in the publication of this notice of proposal in the New Jersey Register after the comment period has concluded.

Social Impact

The SEH Board anticipates that updating the standard plan documents consistent with Chapter 105 will have a positive social impact as the proposed amendments reduce the financial burden for those covered persons managing illnesses, for example, diabetes, anaphylaxis, asthma, and chronic pulmonary obstructive disease, and ensures that covered persons have the appropriate notice that the prescription drugs, supplies, and services needed to treat these conditions are available to them at a predictable cost.

The Board anticipates that updating the standard plan documents to be consistent with P.L. 2023, c. 275 (Chapter 275), which provides coverage for hearing aids and cochlear implants, will have a positive social impact on those covered persons who suffer from varying degrees of hearing loss, which can range from mild to profound. Providing coverage for one hearing aid for each hearing-impaired ear every 24 months will ensure that covered persons who need hearing aids have access to the latest technology when treating hearing loss, while providing coverage for cochlear implants and related costs will provide treatment options for those covered persons experiencing sensorineural hearing loss. The updated standard plan documents will provide appropriate notice to covered persons of the benefits available to them.

The Board anticipates that updating the standard plan documents is consistent with Chapter 194, which requires that small employer health benefits plans issued pursuant to N.J.S.A. 17B:27A-17 et seq., impose no additional limitations on copayments, coinsurance, or deductibles beyond those set forth in the ACA, will result in making health insurance plans more accessible for small employers, and will provide appropriate notice to covered persons of the benefits available to them.

For these reasons, the proposed amendments to the standard plan documents will have a positive social impact on small businesses and on those covered persons by providing appropriate notice of the benefits the laws require and will ensure all carriers are providing the appropriate covered supplies and services at the appropriate cost.

Economic Impact

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

The SEH Board expects the flat cap on the out-of-pocket contribution for any covered person prescribed insulin, an epinephrine auto-injector device, or a prescription asthma inhaler across insurance providers, and coverage for hearing aids and the cost of cochlear implants and related costs of treatment, will have a positive economic impact on covered persons. The amendments to the standard plan documents limit out-of-pocket costs for covered persons managing chronic health issues and ensure that the monthly cost of life saving prescription medications remains predictable. Similarly, the amendment to the standard plan documents limits the financial burden of covered persons treating different types of hearing loss.

The SEH Board expects that the changes implementing Chapter 194 will provide a positive economic impact for covered persons, as the law results in making health insurance plans more affordable for small businesses and their employees, and the proposed amendments to the standard plan documents serve to provide covered persons with appropriate notice of the benefits available to them.

The proposed amendments will not incur any additional administrative, enforcement, or oversight costs for the SEH Board.

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. The proposed amendments to the standard plan documents consistent with Chapters 105 and 275 do not implicate any Federal standards, therefore, a Federal standards analysis is not required. The proposed amendments to the standard plan documents consistent with Chapter 194 do not exceed Federal standards, but require carriers to meet the Federal standards set forth in the ACA. 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, as the amendments relate to the terms of standard plan documents issued by carriers offering small employer health insurance plans in this State. 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, as the proposed amendments relate to the terms of standard plan documents issued by carriers offering small employer health insurance plans in this State.

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 through 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 the 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, pursuant to 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:

OFFICE OF ADMINISTRATIVE LAW NOTE: The New Jersey Small Employer Health Benefits Program Board is proposing amendments at N.J.A.C. 11:21 Appendix Exhibits F, G, W, and 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 in this notice of proposal, but may be reviewed by contacting:

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