

**HEALTH**

**OFFICE OF THE COMMISSIONER**

**Higher Education Student Health Insurance Coverage**

**Proposed Readoption and Recodifications with Amendments: N.J.A.C. 8:57-7.1  
and 7.4 as 8:92-1.1 and 1.3, Respectively**

**Proposed New Rule: N.J.A.C. 8:92-1.2**

Authorized By: Kaitlan Baston, MD, MSc, DFASAM, Acting Commissioner, Department of Health, in consultation with the Public Health Council.

Authority: N.J.S.A. 17:23A-13; 18A:61D-1 et seq., particularly 18A:61D-6; 18A:62-15, 15.1, and 15.2; 26:1A-7 and 15; 26:2-137.1; 26:4-1 et seq., particularly 26:4-2 and 26:4-70; 26:5C-1 et seq., particularly 26:5C-6 and 20; and 30:9-57; and Reorganization Plan No. 003-2005 (Governor Codey, June 27, 2005).

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

Proposal Number: PRN 2024-015.

**Submit written comments** by April 5, 2024, electronically to <http://www.nj.gov/health/legal/ecomments.shtml>, or by regular mail postmarked by April 5, 2024, to:

Kimberly E. Jenkins, Director  
Office of Legal and Regulatory Compliance  
Office of the Commissioner  
New Jersey Department of Health  
PO Box 360

Trenton, NJ 08625-0360

The agency proposal follows:

### **Summary**

P.L. 1986, c. 204 (approved January 6, 1987) established the New Jersey Uncompensated Care Trust Fund (UCTF), and expired December 31, 1988, pursuant to § 15 of that law. P.L. 1989, c. 1 (approved January 11, 1989), extended the UCTF for a two-year period through December 31, 1990, and established therein § 14, which provided: "Every student enrolled as a full-time student at a public or private institution of higher education in this State shall maintain health insurance coverage which provides basic hospital benefits ... throughout the period of the student's enrollment[, and] present evidence [thereof] to the institution at least annually, in a manner prescribed by the institution. The State Board of Higher Education shall require all public and private institutions of higher education in this State to offer health insurance coverage on a group or individual basis for purchase by students who are required to maintain the coverage pursuant to this section [and] shall adopt rules and regulations ... to carry out the purposes of ... this section."

P.L. 1991, c. 187 (approved July 1, 1991), repealed P.L. 1989, c. 1, established the New Jersey Health Care Trust Fund to replace the UCTF, and, at § 77, reestablished verbatim the requirement at repealed P.L. 1989, c. 1, § 14, as new N.J.S.A. 18A:62-15.

P.L. 1994, c. 48 (approved July 1, 1994), the Higher Education Restructuring Act of 1994, abolished the Department of Higher Education, including the State Board of Higher Education, established the Commission on Higher Education, and, at § 87,

transferred the obligation of the State Board of Higher Education to implement N.J.S.A. 18A:62-15 to the Department of Health (Department).

In 1997, the Department established rules implementing N.J.S.A. 18A:62-15 as new Subchapter 7, Higher Education Student Health Insurance Coverage, at N.J.A.C. 8:57, Communicable Diseases. 29 N.J.R. 2261(a); 3727(a).

In 2000, the Department proposed to readopt Subchapter 7 without change, as part of the readoption of N.J.A.C. 8:57, Communicable Diseases. 32 N.J.R. 965(a). N.J.A.C. 8:57 expired on April 12, 2000, before the Department adopted the notice of proposal to readopt N.J.A.C. 8:57. Later in 2000, the Department adopted the expired rules, including Subchapter 7, as new rules at N.J.A.C. 8:57. 32 N.J.R. 3463(a).

In 2003, and again in 2009, the Department readopted Subchapter 7 without change, as part of the readoption of N.J.A.C. 8:57, Communicable Diseases. 34 N.J.R. 3945(a); 35 N.J.R. 4883(b); and 40 N.J.R. 1962(a); 41 N.J.R. 1419(a). In accordance with N.J.S.A. 52:14B-5.1.b, N.J.A.C. 8:57 was scheduled to expire on March 10, 2014. P.L. 2011, c. 45 (effective April 6, 2011) amended N.J.S.A. 52:14B-5.1.b, and operated to extend the chapter expiration dates for the rules in the New Jersey Administrative Code by two years, thereby extending the expiration date of N.J.A.C. 8:57 to March 10, 2016. 43 N.J.R. 1203(a).

P.L. 2013, c. 78, § 1 (approved July 5, 2013) amended N.J.S.A. 18A:62-15 to eliminate the requirement that full-time students at institutions of higher education obtain health insurance and provide proof thereof to their institutions, while maintaining the Department's obligation to require "all public and private institutions of higher education in this State to offer health insurance coverage on a group or individual basis for

purchase by students,” and to promulgate rules implementing this requirement. In an action that had no substantive impact on the Department’s rulemaking obligation, P.L. 2013, c. 253, § 3 (approved January 17, 2014), purported to amend N.J.S.A. 18A:62-15 to delete a reference to a defunct entity of State government; however, P.L. 2013, c. 78, already had deleted the provision that P.L. 2013, c. 253, § 3 purported to amend.

In 2016, the Department again readopted Subchapter 7, without change, as part of the readoption of N.J.A.C. 8:57, Communicable Diseases. 48 N.J.R. 420(a). As stated in that rulemaking, the purpose of the readoption was to maintain the existing chapter’s effectiveness, pending the Department’s development of rulemaking to revise, update, and reorganize existing N.J.A.C. 8:57. *Id.*

N.J.A.C. 8:57 was scheduled to expire February 8, 2023. In accordance with N.J.S.A. 52:14B-5.1.d(1), the expiration date of Chapter 57, Communicable Diseases, was extended by Gubernatorial Order, from February 8, 2023 to February 8, 2024. See 55 N.J.R. 390(a). As the Department has submitted this notice of proposal to the Office of Administrative Law (OAL) prior to that date, the expiration date of N.J.A.C. 8:57-7.1 and 7.4 is extended 180 days to August 6, 2024, pursuant to N.J.S.A. 52:14B-5.1.c(2). (OAL Note: The Department filed a notice of readoption with the OAL, published elsewhere in this issue of the New Jersey Register, to readopt N.J.A.C. 8:57-1, 3, 4, 5, and 6 (Subchapter 2 is reserved and Subchapter 8 is expiring, effective February 8, 2024), effective January 3, 2024, extending the expiration date for those subchapters to January 3, 2031.)

The Department has reviewed existing N.J.A.C. 8:57 and determined that existing Subchapter 7, Student Health Insurance Coverage, remains necessary, proper,

reasonable, efficient, understandable, and responsive to the purposes for which the Department originally promulgated it, as amended and supplemented over time, and should be readopted. However, given the subject matter of Subchapter 7, the Department has determined that the continued maintenance thereof within the rules at N.J.A.C. 8:57, Communicable Diseases, is inappropriate. Therefore, the Department proposes to recodify existing N.J.A.C. 8:57-7.1 and 7.4 as new N.J.A.C. 8:92-1.1 and 1.3, respectively, and amend N.J.A.C. 8:57-7 heading, which is proposed as the N.J.A.C. 8:92 heading to Higher Education Student Health Insurance Coverage. In addition, the Department proposes amendments and a new rule, to implement the 2013 amendments at N.J.S.A. 18A:62-15.

Proposed new Subchapter 1 would establish general provisions. The Department proposes to recodify existing N.J.A.C. 8:57-7.1, Purpose and scope, as N.J.A.C. 8:92-1.1, Purpose and scope. The Department proposes to amend existing subsection (a) thereof to delete a reference to the rule as a “subchapter” and to add a reference to the rule as a “chapter”; to delete a superfluous description of the purpose of the chapter; and to add a reference to the purpose of the chapter as implementing N.J.S.A. 18A:62-15. The Department proposes to delete existing subsection (b), which includes an unnecessary disclaimer as to the effect of the chapter. The Department proposes to add new subsection (b) to specify the scope of the chapter as applying to all institutions.

The Department proposes a new rule at N.J.A.C. 8:92-1.2, Definitions, to establish a definition of the term “institution,” as meaning a public or independent institution of higher education in New Jersey.

The Department is not readopting existing N.J.A.C. 8:57-7.2, Coverage, and 7.3, Documentation of coverage, because these sections implement requirements that P.L. 2013, c. 78, eliminated from N.J.S.A. 18A:62-15, that is, the obligations of full-time students at institutions of higher learning to obtain health insurance and provide proof of their having done so to their institutions.

The Department proposes to amend existing N.J.A.C. 8:57-7.4, Availability of coverage, to recodify it as N.J.A.C. 8:92-1.3, Offer of coverage, to reflect the change in the obligations of institutions pursuant to P.L. 2013, c. 78. The Department proposes to delete from existing subsection (a) descriptive text modifying the term “institution” because the proposed new definition of that term would include those descriptive modifiers; to delete a cross-reference to the obligation of students to maintain health insurance at N.J.A.C. 8:57-7.2, which the Department is not readopting, because P.L. 2013, c. 78, eliminated that obligation, and to add instead the phrase, “enrolled full-time at an institution,” for consistency with N.J.S.A. 18A:62-15, which obliges institutions to offer health insurance to their full-time enrollees; and to delete the phrase “arrange for” and to add, in place thereof, the phrase “offer” for the reasons described below.

In a comment on the Department’s original proposal of existing N.J.A.C. 8:57-7 as a new rule in 1997, the Department of Banking and Insurance recommended that the Department use the phrase “arrange for” rather than the term “offer” at N.J.A.C. 8:57-7.4(a), on the grounds that the term “offer” is a term of art in the insurance industry used to describe an activity that licensed insurers undertake. 29 N.J.R. at 3727. The Department accepted that recommendation and made the recommended change upon its adoption of the proposed new rule. *Id.* Upon reconsideration, the Department has

determined to reinstate its use of the term “offer” because the term “arrange for” is grammatically incorrect; the rule does not, and would not, apply to licensed insurers and has had, and would have, no bearing on their activities; and, as described above, the term “offer” is the term the enabling statute used upon its original promulgation in 1989 as part of the UCTF law, and continues to use, first upon its reestablishment in 1991 at N.J.S.A. 18A:62-15 as part of the New Jersey Health Care Trust Fund Act, and upon the several subsequent amendments at N.J.S.A. 18A:62-15, in 1994 as part of the Higher Education Restructuring Act of 1994, in 2013, and, again, in 2014. The Department has no basis on which to determine that the act of “arranging” insurance for someone is necessarily the same act as “offering” insurance to someone, and the Department, in implementing N.J.S.A. 18A:62-15 through rulemaking, elects to defer to, and maintain consistency with, the wording of the statute.

The Department proposes to delete existing N.J.A.C. 8:57-7.4(b), which establishes a recordkeeping mandate. The Department does not maintain programmatic infrastructure to audit or enforce this mandate, except as may be necessary to respond to a complaint that of an institution’s noncompliance, as described below, with respect to the non-readoption of N.J.A.C. 8:57-7.5. The Department assumes that institutions, as part of their routine business practices, maintain recordkeeping systems to confirm their compliance with applicable laws, if an entity with standing were to assert an institution’s noncompliance therewith, and that, notwithstanding the proposed deletion of existing N.J.A.C. 8:57-7.4(b), institutions would continue to maintain those systems to document their offers of insurance to students.

The Department proposes to not readopt existing N.J.A.C. 8:57-7.5, Inspection of records, because, as stated above with respect to the proposed deletion of existing N.J.A.C. 8:57-7.4(b), the Department does not maintain programmatic infrastructure to undertake ongoing audit of institutions' compliance with N.J.S.A. 18A:62-15 and this section. If a complaint relating to noncompliance were to arise, the Department would respond, as necessary, on a case-by-case basis, in cooperation and consultation with other agencies, such as the New Jersey Commission on Higher Education, that have ongoing oversight functions with respect to institutions, and would avail itself of resources that those agencies may offer with respect to auditing and enforcement as may be appropriate under the particular circumstances that a complaint might present.

As the Department is providing a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The rules proposed for readoption and recodification with amendments and a new rule may have the beneficial social impact of providing access to affordable group or individual health insurance coverage to students enrolled in institutions, and protecting students, who purchase the insurance that institutions offer, from the burden of health care expenses they might otherwise incur, such as the costs of hospitalization in the event of illness or injury. This, in turn, could result in a beneficial social impact to the people of New Jersey to the extent it preserves health care resources that the State maintains for uninsured and underinsured persons, such as Charity Care.

## **Economic Impact**

The rules proposed for readoption and recodification with amendments and a new rule would continue to require institutions to incur administrative costs associated with establishing procedures and systems through which to offer health insurance to enrolled full-time students. For example, institutions may have elected, and may continue to elect, to retain the services of professionals who are skilled in the analysis of insurance and underwriting, to aid in institutions' selection of the insurance programs that they offer to students. Institutions would incur costs associated with that retention.

Existing institutions presumably have insurance programs in place that are compliant with the existing rules at N.J.A.C. 8:57-7, because a law obliging institutions to offer insurance to their full-time enrolled students has existed continuously in New Jersey since 1989, as discussed more fully in the Summary. The rules proposed for readoption and recodification with amendments and a new rule would not increase the obligations of institutions, and the Department does not anticipate that institutions would incur new costs to comply therewith.

Institutions may realize a cost savings resulting from the deletion of existing obligations at N.J.A.C. 8:57-7 to maintain records to memorialize their compliance and to make those records available for Department audit and inspection. However, the Department anticipates that institutions would continue to maintain records as a matter of good business practice, and to facilitate their provision of evidence of compliance in the event of an allegation of noncompliance.

The rules proposed for readoption and recodification with amendments and a new rule may have the beneficial economic impact of providing cost savings to students

enrolled in institutions, by making available group or individual health insurance coverage that is more affordable than generally available coverage options, and, as to students who purchase the insurance that institutions offer, by enabling them to avoid health care expenses they might incur in the absence of having purchased insurance, such as the costs of hospitalization in the event of illness or injury. This, in turn, could result in a beneficial economic impact to the people of New Jersey if it results in the preservation of financial resources that the State uses for programs to provide health care services and/or coverage for uninsured and underinsured persons, such as Charity Care.

The Patient Protection and Affordable Care Act, 42 U.S.C. § 18001 (PPACA), may or may not moot the need for, or relevance of, institutions offering health insurance coverage to students, depending on the cost of insurance coverage that students might obtain by the operation of the PPACA, relative to the cost of insurance that institutions would offer pursuant to N.J.S.A. 18A:62-15 and the rules proposed for readoption and recodification with amendments and a new rule.

### **Federal Standards Statement**

The Department is not proposing the rules proposed for readoption and recodification with amendments and a new rule, pursuant to the authority of, or to implement, comply with, or participate in a program established pursuant to Federal law, or a State statute that incorporates or refers to Federal law, standards, or requirements. As the Economic Impact statement above describes, the PPACA may or may not moot the need for, or relevance of, institutions offering health insurance coverage to students, depending on the cost of health insurance coverage that students might obtain by the

operation of the PPACA, relative to the cost of institutions' offerings. However, the PPACA does not preempt or otherwise limit the operability and effectiveness of N.J.S.A. 18A:62-15. The rules that the Department promulgates pursuant to N.J.S.A. 18A:62-15 are not subject to, and do not conflict with or result in the exceedance of, an applicable Federal law.

### **Jobs Impact**

The Department does not anticipate that the rules proposed for readoption and recodification with amendments and a new rule, would result in the creation or loss of jobs in the State. As the Economic Impact statement describes, institutions may have incurred, and would continue to incur, administrative costs associated with offering health insurance to enrolled full-time students, which could include the cost of retaining administrative and professional staff, such as professionals who are skilled in the analysis of insurance and underwriting, to aid in institutions' selection of insurance programs to offer to students. However, as the Summary more fully discusses, a law obliging institutions to offer insurance to enrolled full-time students has existed continuously in New Jersey since 1989. Therefore, the Department does not anticipate that the continued offering of insurance by existing institutions pursuant to the rules proposed for readoption and recodification with amendments and a new rule, would create a new demand for staff to comply therewith. As the obligation to offer insurance would remain the same, the Department anticipates that the existing demand, if one exists, for staff to assist institutions in compliance, would remain constant.

### **Agriculture Industry Impact**

The Department does not anticipate that the rules proposed for readoption and recodification with amendments and a new rule, would have an impact on the agriculture industry in New Jersey.

### **Regulatory Flexibility Statement**

Institutions that have fewer than 100 full-time employees may exist in the State, may apply in the future for licensure from the Commission on Higher Education, would be “small businesses,” as the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., defines that term, and would be subject to the rules proposed for readoption and recodification with amendments and a new rule. The Department has no direct knowledge of the existence or number of institutions in New Jersey that are small businesses. The Summary describes the compliance obligation that would continue to apply to all institutions, as it has applied since 1989, regardless of business size, which is that institutions are to offer health insurance coverage to students enrolled full-time therein. The rules proposed for readoption and recodification with amendments and a new rule, would eliminate recordkeeping and reporting mandates contained in the existing rules at N.J.A.C. 8:57-7. The Economic Impact and Jobs Impact statements describe the costs to institutions to comply, the fact that institutions may elect to retain professionals with expertise in insurance matters to assist them in compliance, and the fact that the rules proposed for readoption and recodification with amendments and a new rule would not require institutions to retain professionals to comply.

The Department proposes no lesser or differing standards to implement N.J.S.A. 18A:62-15 based on business size. The obligation at N.J.A.C. 8:57-7, as proposed for

readoption and recodification with amendments and a new rule, at new N.J.A.C. 8:92, would be substantively consistent with the burden that N.J.S.A. 18A:62-15 imposes on all institutions, would not impose any additional requirements on institutions, and, thus, would constitute the minimum standard necessary for the Department to fulfill its rulemaking obligation pursuant to N.J.S.A. 18A:62-15. The Department is without authority to establish a standard that is less burdensome than the minimum standard that N.J.S.A. 18A:62-15 establishes, which is that all institutions are to offer health insurance to all students enrolled full-time therein.

### **Housing Affordability Impact Analysis**

The rules proposed for readoption and recodification with amendments and a new rule would have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that they would evoke a change in the average costs associated with housing because the rules proposed for readoption and recodification with amendments and a new rule establish, and would continue to maintain, a requirement that is applicable only to institutions, and would have no bearing on housing matters.

### **Smart Growth Development Impact Analysis**

The rules proposed for readoption and recodification with amendments and a new rule would have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules proposed for readoption and recodification with amendments and new rule would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption and recodification with

amendments and a new rule establish, and would continue to maintain, a requirement that is applicable only to institutions, and would have no bearing on housing matters.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Department 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 rules proposed for readoption with recodifications, amendments, and a new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## **CHAPTER 92**

### **HIGHER EDUCATION STUDENT HEALTH INSURANCE COVERAGE**

#### **SUBCHAPTER [7.] 1. [STUDENT HEALTH INSURANCE COVERAGE] GENERAL PROVISIONS**

[8:57-7.1] **8:92-1.1** Purpose and scope

(a) [This subchapter] **The purpose of this chapter** is [promulgated pursuant] to [the provisions of] **implement** N.J.S.A. 18A:62-15[, and shall assure that each full-time student attending a public or private institution of higher education in New Jersey obtains and maintains health insurance coverage].

[(b) This subchapter shall neither limit the scope of, nor specify the types of, insurance contracts benefits necessary to comply with N.J.S.A. 18A:62-15, except those which are specified at N.J.A.C. 8:57-7.2.]

**(b) This chapter applies to all institutions.**

### **8:92-1.2 Definitions**

**The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.**

**“Institution” means a public or independent institution of higher education in New Jersey.**

[8:57-7.4] **8:92-1.3** [Availability] **Offer** of coverage

[(a)] All [public and private] institutions [of higher education in this State] shall [arrange for] **offer** health insurance coverage on a group or individual basis for purchase by students who are [required to maintain coverage pursuant to N.J.A.C. 8:57-7.2] **enrolled full-time at an institution.**

[(b)] All public and private institutions of higher education in this State required to arrange for coverage pursuant to this subchapter shall be required to maintain evidence of compliance with (a) above.]