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# ADVISORY BULLETIN
# 10-SEH-05

August 13, 2010

To: SEH Program Member Carriers that Issue Coverage
SEH Program Interested Parties

From: Ellen DeRosa
Executive Director

**Re: Liability of Carriers following Plan Option Withdrawals
Coinsurance and "MOOP" Credit**

As part of its ongoing responsibility for oversight of the small employer health coverage program, the Small Employer Health Benefits Program Board (SEH Board) considers questions and comments presented by employers, producers and carriers. The SEH Board recently considered comments from producers concerning the impact of the withdrawals of a significant number of plan options.

## Plan Option Withdrawals

The Small Employer Health Benefit Program regulations permit carriers to withdraw from the small employer market in its entirety and also permit carriers to withdraw plans, plan options and deductible and copayment options. [N.J.A.C. 11:21-16] The requirements for withdrawing plan options are set forth in N.J.A.C. 11:21-16.5. In the instance of plan option withdrawals, carriers must file written notice of the intent to withdraw the plan option(s) with the Department of Banking and Insurance. Carriers must cease offering the withdrawn option(s) within 60 days after the notice of intent to withdraw. Carriers must give at least 90 days advance notice to the policyholders that the plan option(s) will be non-renewed as of the anniversary dates of the plans.

## The Concern

The withdrawal negates the opportunity to renew an existing plan, meaning if the employer wishes to continue to offer coverage, the employer must select another plan from the same carrier or from another carrier. As explained below, there are coverage consequences to employees and dependents who lose coverage under the withdrawn plan and resume coverage under a replacement plan.

Anniversary dates occur throughout the calendar year. The cost sharing provisions (deductible, coinsurance and Maximum Out of Pocket ("MOOP")) of most small employer health benefits plans operate on a calendar year basis. The Discontinuance and Replacement regulation addresses deductible credit in the event of the termination of one plan and immediate replacement with another plan. [N.J.A.C. 11:2-13.6] There is no similar provision for credit of coinsurance or MOOP in the event of the termination of one plan and immediate replacement with another plan.

Employees and dependents who may already have satisfied the MOOP and started receiving 100% coverage under the plan that is withdrawn would find themselves with deductible credit and nothing else, meaning they would need to again pay coinsurance and work toward the accumulation of the MOOP.

While the same consequence occurs whenever an employer elects to make a plan change the consequence seems particularly harsh when the plan change is beyond the employer's control. In the instance of a plan option withdrawal, the plan change is necessitated by the action a carrier has taken to withdraw plan options.

**Limited Circumstances for Coinsurance and MOOP Credit**

During the August 11, 2010 Board meeting the Small Employer Health Benefits Program Board voted to require both coinsurance and MOOP credit in the following limited circumstances such that the coinsurance requirement and the MOOP accumulation do not begin anew.

- Carrier has filed a plan option withdrawal AND
- The employer receiving the nonrenewal selects another plan from the same carrier AND
- A member covered under the replacement plan provides information to document the coinsurance and MOOP satisfied under the prior plan.

Please take note of the following:

- The credit is ONLY provided if the employer selects a replacement plan offered by the carrier that withdrew the plan that was non-renewed.
- The credit ONLY applies to employees and dependents who were covered under the plan that was non-renewed and who elect coverage under the replacement plan issued by the same carrier
- To receive the credit the employee or dependent will be required to initiate the request for the coinsurance and MOOP credit. Carriers are not required to identify any person who might be eligible for the credit but are required to provide the credit once the person identifies himself or herself as a person who was covered under the non-renewed plan who needs coinsurance and MOOP credit applied to the new plan.

The Board considered the possibility that an employer may have offered more than one plan where one was non-renewed and another was not. In that situation, the coinsurance and deductible credit is extended ONLY to those persons who are covered under the withdrawn plan who transfer to the replacement plan with the same carrier. If other employees of the group voluntarily elect to switch to the new replacement plan or if the employer chooses to make a plan change to an existing plan, there is no coinsurance or MOOP credit.

**Effective Date**
The requirement to provide coinsurance and MOOP credit in the limited circumstances identified above is effective August 1, 2010.

The Board is aware that some non-renewals began August 1, 2010. The Board believes the coinsurance and MOOP credit are valuable protections for consumers and even though the employers and their employees and dependents were not aware the credit would be available at the time their replacement coverage began, the Board believes they are eligible for the coinsurance and MOOP credit under the specific circumstances outlined above.

*Example*
Employer M offers an HMO a PPO and a POS. Employer M received notice from Carrier X that the PPO plan was withdrawn and will be non-renewed on the November 1 anniversary date.

*Scenario 1*: Employer M elects a new PPO from Carrier X. One of the employees covered under the withdrawn PPO plan already paid coinsurance and satisfied the MOOP under the prior PPO plan and elects coverage under the new PPO. To get the coinsurance and MOOP credit that employee must contact Carrier X to request the credit. Carrier X will then apply the coinsurance and MOOP credit toward the coinsurance and MOOP provisions under the replacement PPO plan. Note that network amounts credit toward like network amounts and non-network amounts credit toward like non-network amounts.

*Scenario 2*: Employer M elects a new PPO from Carrier X. As in Scenario 1, one of the employees under the withdrawn PPO plan satisfied the MOOP and is given credit under the new PPO plan. Employer M also decides to buy a different POS plan One of the employees covered under the POS plan already paid coinsurance and satisfied the MOOP under the existing POS plan and elects coverage under the new POS plan. The employee under the POS plan will not be entitled to coinsurance and MOOP credit since the change in plans was initiated by the employer and was not the result of a plan option withdrawal. Thus, one of Employer M's employees will get credit and another employee will not.