NEW JERSEY
SMALL EMPLOYER HEALTH BENEFITS PROGRAM
20 West State Street, 10th floor
CN 325
Trenton, NJ 08625

ADVISORY BULLETIN
96-SEH-02

To: **All Carriers Covering New Jersey Small Employers**
(whether directly or through an association, out of state trust, or multiple employer arrangement).

From: **The Small Employer Health Benefits Program Board**

Re: **Amendments to The Small Employer Health Benefits Act**

Date: January 31, 1996

The New Jersey Legislature recently passed, and the Governor signed, several laws (P.L. 1995, c. 50, P.L. 1995, c. 298, and P.L. 1995, c. 340) that amend the Small Employer Health Benefits ("SEH") Act (P.L. 1992, c. 162, N.J.S.A. 17B:27A-17 et seq.), the law which governs the health coverage market for employers with 2-49 full-time employees. The purpose of this bulletin is to give carriers, agents, and small employers an overview of these recent changes in the law. Many of the amendments to the law will require the SEH Program Board and the Department of Insurance ("Department") to promulgate new regulations or change existing regulations, a process that will take place over the next several months. This bulletin should provide guidance in the meantime, though it should not substitute for a review of the laws themselves.

Carriers should be aware that all direct or indirect mechanisms of providing insured health coverage to New Jersey small employers are subject to the SEH Act and to regulation by the SEH Board and Department of Insurance. The Board and Department urge carriers and agents to read the amendments to the law and applicable regulations and to seek guidance from the Board or Department in areas where they have doubt as to the meaning of the law.

Kevin O'Leary
Executive Director

TABLE OF CONTENTS

I. MISCELLANEOUS AMENDMENTS TO SMALL EMPLOYER HEALTH BENEFITS ACT 3

A. Stop Loss Or Excess Risk Insurance 3
B. Portability / Waiver of Preexisting Condition Waiting Period 3
C. Renewal of Small Employer Plans Covering One Employee 3
D. Employees Covered by Collectively Bargained Employee Welfare Benefits Plan 3
E. Carrier Acting as a Third Party Administrator 4
F. Elimination of Exemption for Certain Carriers Offering Association Plans 4
G. Continuation of Coverage, or "Mini-COBRA" 4
H. Elimination of Reinsurance Mechanism 4
I. Redesignation of Seats on Small Employer Board 4
J. Prescription only plans 4
K. Local government exemption 4
L. HMO/Indemnity Carrier Dual Contracting Arrangements 4
M. Hospital Service Corporation "Wrap-around" Contracts 5
N. Community Rating 5
O. Coverage of Individuals In Small Employer Market 5
P. Notification of Plan Termination 5

II. CONTINUATION, RENEWAL, ISSUANCE AND WITHDRAWAL OF NON-STANDARD HEALTH BENEFITS PLANS 6

A. Background: 1994 SEH Act Amendments 6
1. Definition of "Standard" Versus "Non-Standard" Health Benefits Plan 6
2. Rules of Reform Apply to All Standard and Non-Standard Plans 6
3. Offer of Non-Standard Health Benefits Plans to New Small Employers And Employees 6
B. 1995 SEH Act Amendments 7
1. Mandatory Offer By Carrier of Standard Plans A through E, or HMO 7
2. Renewal and Continuation of Non-Standard Plans 7
3. Amendment of Non-Standard Plan Requires Commissioner's Approval 7
4. Small Employer Changing Carriers Under Non-Standard Plan 7
5. Withdrawal of Non-standard Health Benefits Plans 8
6. Separate Rating of Closed Non-standard Health Benefits Plan 8
7. Non-standard Association Plans that Changed Carriers From 3-1-94 to 1-5-96 8
8. Non-standard Association Plans that Change Carriers After 1-5-96 8
9. Mandatory Offer of One Standard Plan By An Association, Out-Of-State Trust, Or Multiple Employer Arrangement 8

I. MISCELLANEOUS AMENDMENTS TO SMALL EMPLOYER HEALTH BENEFITS ACT

A. Stop Loss Or Excess Risk Insurance

P.L. 1995, c. 298 and P.L. 1995, c. 340 both define "stop loss or excess risk insurance" and exclude it from the definition of "health benefits plan." The new definition establishes claim attachment points for stop loss or excess risk insurance of $20,000* per person and 125% of expected claims in the aggregate. A stop loss policy lawfully issued to a small employer must meet or exceed the individual attachment point, if the policy has only an individual attachment point, or the aggregate attachment point, if the policy has only an aggregate attachment point, or both the individual and aggregate attachment points, if the policy has both individual and aggregate attachment points. Carriers shall not issue or renew stop loss or excess risk policies or contracts with attachment points lower than those set forth above.

* P.L. 1995, c. 298 established a $25,000 individual attachment point, while P.L. 1995, c. 340 established a $20,000 individual attachment point. P.L. 1995, c. 340, signed on January 5, 1996, controls.

B. Portability / Waiver of Preexisting Condition Waiting Period

P.L. 1995, c. 340 establishes a definition of "qualifying previous coverage" that broadens the type of coverage a carrier must credit toward satisfying the 6-month preexisting condition waiting period (applicable only with respect to groups of 2 to 5 employees and late enrollees) a carrier may impose on persons with preexisting conditions. The term "qualifying previous coverage" includes individual or group insured, self-funded, or government funded (Medicare, Medicaid, etc.) health coverage. The types of coverage not included as "qualifying previous coverage" are listed in section 1 of P.L. 1995, c. 340.

C. Renewal of Small Employer Plans Covering One Employee

P.L. 1995, c. 50 eliminates an anomaly in the law which required a carrier to issue coverage to one employee of a bona fide small employer as long as the 75% participation rate had been met, but allowed the carrier to refuse to renew the plan if fewer than 2 employees were covered as of the renewal date. The enrollment of one employee of a small employer in a small employer plan could satisfy the 75% participation requirement because the participation rate calculation includes employees covered by any health benefits plan offered by the small employer or a spouse's health benefits plan offered by another employer. P.L. 1995, c. 50 eliminates the non-renewal provision, so that a carrier must issue and renew a plan covering one employee of a small employer, as long as 75% of the eligible employees are covered by a health benefits plan issued to the small employer or their spouses' health benefits plan offered by another employer.

Note: this change in the law does **not** permit self-employed individuals with no other employees to enroll in small employer health benefits plans. The IHC and SEH Boards discussed at length the distinctions between individual and group coverage in Joint Advisory Bulletin 95-01, which continues to serve as the best guidance available to carriers and agents on this subject.

D. Employees Covered by Collectively Bargained Employee Welfare Benefits Plan

P.L. 1995, c. 298 excludes employees covered by a collectively bargained employee welfare benefit plan from the calculation of a small employer's participation rate. This technical change reflects a prior amendment to the law which excluded such employees from the definition of "eligible employee." Accordingly, carriers shall not count such employees in determining whether an employer is a small employer or whether 75% of the eligible employees are participating in a health benefits plan.

E. Carrier Acting as a Third Party Administrator

P.L. 1995, c. 298 eliminates the prohibition on a carrier's circumventing the intent of the law by acting as a third party administrator for small employers that were insured as of September 1, 1992.

Note: A stop loss or excess risk insurance policy issued to reimburse a self-funded health plan covering one or more small employers must comply with the attachment points described in subsection A above.

F. Elimination of Exemption for Certain Carriers Offering Association Plans

P.L. 1995, c. 298 amends section 9(d), N.J.S.A. 17B:27A-25(d), to clarify that the SEH Act applies to carriers that provide health benefits plans to small employers through a policy issued to an association or trust of employers. Such carriers must offer standard health benefits plans to non-association or non-trust employers in the same manner as other carriers participating in the small employer market. P.L. 1995, c. 298 also eliminates an exemption from the law for carriers offering certain narrowly defined association plans.

G. Continuation of Coverage, or "Mini-COBRA"

P.L. 1995, c. 298 clarifies that the law's continuation of coverage right extends to employees who cease to work the minimum 25 hours per week required to be eligible to participate in a health benefits plan. The change brings the continuation of coverage provision into conformance with the definition of "eligible employee." P.L. 1995, c. 298 also requires carriers to provide notice to employees of their continuation rights in the certificate of coverage issued to the employee. Small employers are required to provide notice to employees of their continuation rights at the time of the qualifying event.

H. Elimination of Reinsurance Mechanism

P.L. 1995, c. 298 eliminates the reinsurance mechanism in the original law, but gives the Board authority to establish, by rule, a voluntary risk pooling arrangement for program members, subject to review of the Legislature.

I. Redesignation of Seats on Small Employer Board

As a result of eliminating the reinsurance mechanism, P.L. 1995, c. 298 redesignates carrier seats on the SEH Board currently assigned to risk-assuming and reinsuring carriers. The seat currently held by a risk-assuming carrier will be redesignated as a seat for a carrier whose principal health insurance business is in the small employer market. The seat currently held by a reinsuring carrier will be redesignated as a seat for an HMO. P.L. 1995, c. 298 directs the Board to hold an election to fill the two seats before March 29, 1996. Ballots will be issued to carriers in February.

J. Prescription only plans

P.L. 1995, c. 340 excludes from the definition of "health benefits plan" prescription only plans.

K. Local government exemption

P.L. 1995, c. 340 excludes from the definition of "small employer" State, county, or municipal bodies, agencies, boards or departments.

L. HMO/Indemnity Carrier Dual Contracting Arrangements

P.L. 1995, c. 340 authorizes the Board to promulgate additional policy forms to allow an indemnity carrier to provide indemnity benefits to a small employer in conjunction with an HMO contract issued to the small employer. Such dual contracting arrangements must be filed with the Commissioner for approval.

M. Hospital Service Corporation "Wrap-around" Contracts

P.L. 1995, c. 340 clarifies that a hospital service corporation and another carrier offering a standard health benefits plan through a "wrap-around contract" approved by the Board shall have the discretion to determine between themselves the appropriate allocation of coinsurance and deductible limits for the combined contracts.

N. Community Rating

P.L. 1995, c. 340 delays until January 1, 1998 the market transition from modified community rating to pure community rating. The SEH Board shall conduct a study of the effect on small employer groups of the transition to community rating for submission to the Governor and Legislature no later than June 30, 1997, so that the Legislature may determine whether to allow pure community rating to take effect.

O. Coverage of Individuals In Small Employer Market

P.L. 1995, c. 340 directs the SEH Board, in conjunction with the Individual Health Coverage Program Board and Department of Insurance, to conduct a study to determine the effects on the individual and small employer markets of permitting individuals to purchase small employer coverage. The IHC Board is directed to report its findings to the Governor and Legislature by July 5, 1996.

P. Notification of Plan Termination

P.L. 1995, c. 340 requires carriers to notify employers no longer eligible to be covered by a small employer plan at least 60 days prior to the date of termination. Such notification is not required in cases of nonpayment of premium, fraud or misrepresentation of the employer or eligible employees and dependents, or their representatives.

II. CONTINUATION, RENEWAL, ISSUANCE AND WITHDRAWAL OF NON-STANDARD HEALTH BENEFITS PLANS

A. Background: 1994 SEH Act Amendments

The Legislature amended the SEH Act in 1994 to delay the scheduled mandatory conversion to standard health benefits plans for two years and to apply all non-benefit design rules of reform to pre-reform, or "non-standard," health benefits plans. See P.L. 1994, c. 11. Understanding the 1994 changes is essential to a discussion of how the 1995 amendments to the SEH Program apply to non-standard plans.

1. Definition of "Standard" Versus "Non-Standard" Health Benefits Plan

"Non-standard health benefits plans" are health benefits plans that were issued to small employers by a carrier, or through an association, out-of-state trust, or multiple employer arrangement, prior to January 1, 1994, the beginning of the reformed small employer market in New Jersey, and which were in effect on February 28, 1994. Plans filed with the Commissioner pursuant to subparagraphs B(4), (7), and (8) below will be included in this definition. "Standard health benefits plans" are plans A, B, C, D, E, and HMO promulgated by the SEH Board.

2. Rules of Reform Apply to All Standard and Non-Standard Plans

In accordance with P.L. 1994, c. 11, all non-standard health benefits plans that were continued or renewed on or after September 11, 1994 were required to comply on the first renewal date with statutory provisions regarding:

- guaranteed issuance and renewal;
- the imposition of preexisting condition limitations;
- 75% minimum employee participation rate;
- 10% employer contribution;
- modified community rating;
- 75% carrier minimum loss ratio, and
- continuation of coverage rights for terminated and part-time employees.

3. Offer of Non-Standard Health Benefits Plans to New Small Employers And Employees

a) By Association, Out-Of-State Trust, Or Multiple Employer Arrangement

An association, out-of-state trust, or multiple employer arrangement may offer a non-standard health benefits plan to new small employers.

b) By Carrier

A carrier may not directly offer a non-standard health benefits plan to new small employers, except as provided in subparagraphs B(4), (7), and (8) below.

c) Coverage of New Employees

A carrier, association, out-of-state trust, or multiple employer arrangement may offer coverage by a non-standard health benefits plan to new employees of a covered small employer.

B. 1995 SEH Act Amendments

1. Mandatory Offer By Carrier of Standard Plans A through E, or HMO

P.L. 1995, c. 340 reiterates the requirement already in the SEH Act that a carrier that offers, continues, or renews non-standard plans through an association, out-of-state trust, or multiple employer arrangement must also offer standard health benefits plans A through E, or HMO, to any small employer, association, or multiple employer arrangement. **In other words, no carrier may maintain in-force coverage of small employers, through any mechanism, unless it also offers the standard health benefits plans in the market in accordance with section II(A) above.** Carriers that do not issue the standard plans must withdraw from the market in accordance with Department regulations.

2. Renewal and Continuation of Non-Standard Plans

P.L. 1995, c. 340 allows a small employer to renew or continue indefinitely coverage by a non-standard health benefits plan (unless the carrier withdraws the plan), as long as the carrier renewing or continuing the plan complies with all requirements applicable to small employer carriers, including those enumerated in section II(A) above, as well as the following:

a) Rating Methodology and Loss Ratio Calculation

The carrier must comply with regulations established by the Commissioner governing rating methodology, loss ratio calculation, and other carrier obligations, in addition to section II(A) above, for continuing or renewing non-standard health benefits plans. Current rating and loss ratio rules remain in effect, but P.L. 1995, c. 340 directs the Commissioner to adopt new regulations by July 1, 1996; and

b) Commissioner's Approval of Plans Issued through Trust

No later than July 1, 1996, carriers shall file for approval by the Commissioner all non-standard plans issued through an out-of-state trust, or lose the right to continue or renew such plans. The Commissioner will not approve such plans for renewal or continuation unless the benefits offered under the plans are at least equal to the actuarial value and benefits coverage of standard health benefits Plan A.

3. Amendment of Non-Standard Plan Requires Commissioner's Approval

P.L. 1995, c. 340 provides that a non-standard health benefits plan that has been filed with the Commissioner may be amended as to its benefits structure if the amendment does not reduce the plan's actuarial value and benefits coverage below that of standard Plan A. The amendment must be filed with the Commissioner for approval in accordance with statutory filing requirements.

4. Small Employer Changing Carriers Under Non-Standard Plan

P.L. 1995, c. 340 provides that a small employer covered by a non-standard plan may change carriers after January 5, 1996 and maintain the non-standard plan, at the carrier's option, as long as the new carrier files the non-standard plan with the Commissioner for approval. However, a carrier is not required to issue a non-standard plan issued by another carrier. A small employer that changes the issuing carrier of a non-standard health benefits plan may not modify the benefit structure of the non-standard health benefits plan within the first six months of changing carriers.

5. Withdrawal of Non-standard Health Benefits Plans

P.L. 1995, c. 340 provides that a carrier, association, out-of-state trust, or multiple employer arrangement may withdraw a non-standard health benefits plan, with the approval of the Commissioner and in accordance with regulations, on the grounds that retention of the plan would cause an unreasonable financial burden to the issuing carrier.

6. Separate Rating of Closed Non-standard Health Benefits Plan

P.L. 1995, c. 340 would permit a carrier, with the approval of the Commissioner, to establish its rates for a non-standard health benefits plan that has not been newly issued to a small employer group since January 1, 1994 on the basis of the loss experience of that plan. Such plans shall not be offered to new small employer groups.

7. Non-standard Association Plans that Changed Carriers From 3-1-94 to 1-5-96

The SEH Act previously prohibited a carrier from newly issuing, on or after January 1, 1994, a non-standard health benefits plan to an association covering small employers. P.L. 1995, c. 340 amends the law to provide that, if an association that made available a non-standard health benefits plan to small employer members before March 1, 1994 subsequently changed carriers between March 1, 1994 and January 5, 1996, the new issuing carrier shall be deemed to be eligible to continue the non-standard health benefits plan, subject to all other requirements of the law.

8. Non-standard Association Plans that Change Carriers After 1-5-96

P.L. 1995, c. 340 requires that when an association, multiple employer arrangement, or out-of-state trust that made available a non-standard health benefits plan to small employer members before March 1, 1994 changes carriers after January 5, 1996, the new issuing carrier shall file the non-standard health benefits plan with the Commissioner for approval in order to be deemed eligible to continue the non-standard health benefits plan.

9. Mandatory Offer of One Standard Plan By An Association, Out-Of-State Trust, Or Multiple Employer Arrangement

P.L. 1995, c. 340 requires an association, out-of-state trust, or multiple employer arrangement to make available to its small employer members at least one of the standard health benefits plans, to be determined by the Commissioner, in addition to non-standard plans it offers.

Note: This requirement does not affect a carrier's obligation to offer all five standard plans in the small employer market, described in section II(B)(1) above.

* * *