

**INSURANCE**

**DEPARTMENT OF BANKING AND INSURANCE**

**SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD**

**Small Employer Health Benefits Program Rules and Standard Plans**

**Adopted Amendments: N.J.A.C. 11:21-1, 3, 4, 6, 7, and 17 and N.J.A.C. 11:21 Appendix Exhibits F, G, K, W, Y, HH and II.**

**Adopted Repeals and New Rules: N.J.A.C. 11:21-7.2 and 7.7**

**Adopted New Rules; N.J.A.C. 11:21-7.7A**

**Adopted Repeals: N.J.A.C. 11:21 Appendix Exhibits A, H, N, O and V.**

Authorized By: New Jersey Small Employer Health Benefits Program, Ellen DeRosa, Executive Director

Authority: N.J.S.A. 17B:27A-17 et seq.

Proposed: November 27, 2013

Adopted: December 18, 2013 by the New Jersey Small Employer Health Benefits Program Board, Ellen DeRosa, Executive Director

Filed: December 18, 2013 as R. 2013 d. \_\_\_\_ **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3)

Effective Date: December 18, 2013

Operative Date: January 1, 2014 for new issues; no later than October 1, 2014 for renewals.

Expiration Date:

Summary of Hearing Officer Recommendations and Agency Responses:

The New Jersey Small Employer Health Benefits Program Board (SEH Board) held a hearing on Tuesday December 10, 2013 at 9:00 A.M. at the Department of Banking and Insurance, 11<sup>th</sup> floor Conference Room, 20 West State Street, Trenton, New Jersey to receive

testimony with respect to the standard health benefits plans, set forth in Exhibits Exhibits A, F, G, V, W, Y, HH and II of the Appendix to N.J.A.C. 11:21 along with Exhibit K. Ellen DeRosa, Executive Director of the IHC Board, served as hearing officer.

One person attended the hearing, Matt Meenan, President of Applied Consulting Insurance. Mr. Meenan requested the opportunity to review some of the amendments to make sure he clearly understands the amendments. The hearing officer explained that the hearing provides the public with the opportunity to provide comments which would then be summarized and responses provided in the notice of adoption. Mr. Meenan stated he had no comments.

No testimony was provided during the hearing. The hearing officer made no recommendations regarding the proposed amendments. The hearing record may be reviewed by contacting Ellen DeRosa, Executive Director, New Jersey Small Employer Health Benefits Program Board, P.O. Box 325, Trenton, NJ 08625-0325.

### **Summary of Public Comments and Agency Responses**

The SEH Board received comments from Stephanie Colonna-Romano of Martin Financial Group and Lee Dykstra of Dykstra Financial.

COMMENT 1: One commenter noted that the proposed definition of “eligible employee” does not exclude immediate family members and the definition of “employee” excludes immediate family members. The commenter asked if an employer that employs an immediate family member would qualify as a small employer under the first part of the definition of small employer and could thus purchase small employer coverage outside the SHOP.

RESPONSE 1: If the family member is a bona fide employee and works at least 25 hours per week such family member is an eligible employee for purposes of the first part of the definition

of small employer. In this case the employer may purchase a small employer plan covering the employer. No change was requested by this comment.

COMMENT 2: One commenter noted that the definition of “employee” does not include a minimum number of hours. The commenter asked whether an employer with part-time employees who are counted using the calculation provided in N.J.A.C. 11:21-7.1(b) could purchase small employer coverage covering just the employer. The commenter assumes that the calculation using the number of hours the part time employees work could result in at least one employee.

RESPONSE 2: If the calculation provided in N.J.A.C. 11:21-7.1(b) results in a number that is greater than or equal to 1 the employer would employ at least 1 but not more than 50 employees and therefore the employer would qualify as a small employer under the second part of the definition of small employer and could thus purchase a small employer plan. No change was requested by this comment.

COMMENT 3: One commenter noted that coverage as an employee or dependent under a fully insured group plan provides participation credit. The commenter questioned whether coverage under fully-insured plans issued by two different carriers would count toward participation.

RESPONSE 3: The rule proposal did not amend the provision of the regulation regarding participation credit as applied to coverage under a fully-insured group plan. The comment question is beyond the scope of the proposal.

COMMENT 4: One commenter requested guidance regarding the ability of the employer to establish a measurement period.

RESPONSE 4: Since the measurement period is used to determine large employer status, measurement period is not addressed in the regulations governing small employers. No change is being made in response to this comment.

COMMENT 5: One commenter stated that the amended definition of small employer that precludes the purchase of small employer coverage by husband/wife groups will unfairly force these small groups into the individual market. The commenter asked what requires the change to the definition of eligible employee.

RESPONSE 5: The proposal summary explained that federal regulations require the amended definition. Persons who are ineligible for group coverage have the opportunity to seek individual coverage. No change is being made in response to this comment.

### **Agency-Initiated Changes**

On adoption, the SEH Board is amending the definition of employee to more clearly explain the exclusion with respect to a shareholder in a Subchapter S corporation. The exclusion applies to a person who is more than a 2% shareholder in an S corporation.

On adoption, the SEH Board is amending the Term of the Policy/Contract - Renewal Privilege-Termination provision to specify the timing for the notices of non-renewal as required by N.J.A.C. 11:21-16.5.

### **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. These proposed amendments, repeals, and new rules are subject to Federal requirements, as stated in the proposal summary, addressing certain standards for health insurance contracts in the Federal law and the corresponding rules governing the small employer market. Specifically, the Federal law requires that health benefits plans offered to individuals and small groups include coverage for certain categories of services, referred to earlier as EHB. Because HHS permitted States to establish the benefits for the EHB benchmark plan (within parameters), and the amendments, repeals, and new rules are bringing the SEH standard plans into compliance with the selected EHB benchmark, the SEH Board does not believe the proposed amendments, repeals, and new rules exceed the Federal standards. The amendments, repeals, and new rules the Board proposes to N.J.A.C. 11:21-1, 3, 4, 6, 7 and 17 are required to implement the various provisions of the Federal law, as discussed above. Consequently, the SEH Board does not believe a Federal standards analysis is required.

Full text of the amended rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

### **§ 11:21-1.2 Definitions**

Words and terms contained in the Act, when used in this chapter, shall have the meanings as defined in the Act, unless the context clearly indicates otherwise, or as such words and terms are further defined by this chapter.

“Employee” as used in subsection b of the definition in this section of “small employer” means an individual who is an employee under the common law standard as described in 26CFR 31.3401(c)-1. Employee excludes a sole proprietor, a partner in a partnership and **more than** a 2 percent **shareholder in a Subchapter S** corporation [shareholder] as well as immediate family members of such individuals. Employee also excludes a leased employee.