

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE

INDIVIDUAL HEALTH COVERAGE PROGRAM

Amendments to Policy Forms to Comply with State and Federal Law and to Add and Optional Product Type

Proposed Amendments: Exhibits A, B, and F of the Appendix to N.J.A.C. 11:20

Authorized By: New Jersey Individual Health Coverage Program Board, Ellen DeRosa, Executive Director

Authority: N.J.S.A. 17B:27A-2 et seq.; P.L. 2011, c. 188

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

Proposal Number: PRN 2012-

As required by N.J.S.A. 17B:27A-16.1, interested parties may testify with respect to the standard health benefits plans and specimen Basic and Essential plan, set forth in Exhibits A, B and F of the Appendix to N.J.A.C. 11:20 at a public hearing to be held at 9:00 a.m. on Thursday, August 30, 2012 at the New Jersey Department of Banking and Insurance, 11th floor Conference Room, 20 West State Street, Trenton, New Jersey.

Submit comments by September 4, 2012 to:
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The agency proposal follows:

Summary

The Individual Health Coverage (IHC) Program was established in accordance with P.L. 1992, c. 161. The IHC Program is administered through a Board of Directors (Board). One of

the primary functions of the IHC Program and its Board is the creation of standard health benefits plans (standard plans) to be offered in the individual market in New Jersey. There are five standard plans established through regulation and set forth in Exhibits A and B of the Appendix to N.J.A.C. 11:20. In addition, the IHC Board created a specimen form for the legislatively-designed basic and essential plans (B&E plan) that carriers may use to comply with the B&E plans. The B&E specimen form is set forth in Exhibit F of the Appendix to N.J.A.C. 11:20.

Since the IHC Board's last modifications to the IHC standard plans and forms in 2010, new State and Federal laws have been enacted that have an impact upon both the standard plans and the B&E plans. These include:

- 1) P.L. 2011, c. 188, which requires coverage of orally administered anti-cancer medications on a basis no less favorable than coverage provided for intravenously administered or injected anti cancer medications;

- 2) Rules regarding coverage of preventive services under the Patient Protection and Affordable Care Act, Public Law 111-148 (PPACA). The rules are found at 26 CFR Part 54, 29 CFR Part 2590 and 45 CFR Part 147. The Federal Department of Health & Human Services issued additional guidance regarding women's preventive services dated February 10, 2012.

- 3) Rules regarding appeals under PPACA which New Jersey addressed in N.J.A.C. 11:24-8 and N.J.A.C. 11:24A-3.

The proposed amendments to Exhibits A, B, and F are intended to bring the standard plans and the B&E plan into compliance with these newest laws. The standard plans must comply with the anti-cancer medication law set forth in L. 2011, c. 188 and the preventive care requirements under PPACA and the appeals requirements under N.J.A.C. 11:24-8 and N.J.A.C.

11:24A-3. The B&E Plan must comply with the preventive care requirements under PPACA and appeals requirements under N.J.A.C. 11:24-8 and N.J.A.C. 11:24A-3.

In addition, the IHC Board is proposing amendments to Exhibit A to allow carriers to issue coverage as an Exclusive Provider Organization (EPO) plan. Included with those amendments are additional cost sharing options for the coverage of prescription drugs.

The IHC Board is proposing the following specific amendments:

As required by P.L. 2011, c. 188, Plans A/50, B, C, D and HMO are being amended to include coverage for orally administered anti-cancer medications on a basis no less favorable than the coverage for intravenously administered or injected anticancer medications. The amendments appear within the “covered charges” and “covered services and supplies” text. The Board recognizes that administration of the coverage may vary from carrier to carrier. The Board proposes text that describes an approach to administration of the required coverage. The Board proposes allowing carriers to substitute alternate text to address more clearly the process the carrier uses to comply with the requirements of P.L. 2001, c. 188.

As required by PPACA, Plans A/50, B, C, D and HMO and the specimen B&E plan are being amended to specify an expanded definition of preventive care.

As required by PPACA, the specimen B&E plan is being amended to expand the Wellness Benefit to include FDA-approved contraceptive services and to amend the prescription drugs exclusion to specify an exception for the prescription drugs that are included under the expanded wellness benefit.

As required by PPACA and New Jersey law, Plans A/50, B, C, D and HMO and the specimen B&E plan are being amended to direct carriers to include amended appeals provisions addressing stage 1 and external appeal processes.

The Board proposes specimen schedule pages along with Exclusive Provider Organization (EPO) provisions to accommodate a new network-only plan design. The EPO can be offered either with or without a requirement to select a primary care physician and with or without requiring referrals to use specialist services. N.J.A.C. 11:20-3.1(d) which addresses plans offered through or in conjunction with a selective contracting arrangement supports the proposed offering of an EPO option.

The Board proposes new cost sharing options for prescription drugs to be available with the EPO product. The new EPO schedule pages contain text that addresses the cost sharing options. The new options differentiate among brand name, generic, preferred and non-preferred drugs. As a result the Board proposes amending the definition section to include definitions of brand name drug, generic drug, preferred drug and non-preferred drug. The definitions are shown as variable and would be included with an EPO product that uses one of the new prescription drug cost sharing options.

IHC Rulemaking Procedures

The IHC Board is proposing these amendments in accordance with the special action process established at N.J.S.A. 17B:27A-16.1, as an alternative to the rulemaking process specified at N.J.S.A. 52:14B-1 et seq. Pursuant to N.J.S.A. 17B:27A-16.1, the IHC Board may expedite adoption of certain actions, including modification of the IHC Program's health benefits plans and policy forms, if the IHC Board provides interested parties a minimum 20-day period during which to comment on the Board's intended action following notice of the intended action in three newspapers of general circulation, with instructions on how to obtain a detailed description of the intended action and the time, place and manner by which interested parties may present their views regarding the intended action. Concurrently, the IHC Board must

forward notice of the intended action to the Office of Administrative Law (OAL) for publication in the *New Jersey Register*, although the comment period runs from the date the notice is submitted to the newspapers and OAL, not from the date of publication of the notice in the *New Jersey Register*. The IHC Board also sends 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 IHC Board must allow for testimony to be presented at a public hearing prior to adopting any such modifications. Subsequently, the IHC Board may adopt its intended action immediately upon the close of the specified comment period or close of a public hearing (whichever is 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. If the Board does not respond to commenters as part of the notice of adoption, the Board will respond to the comments timely submitted within a reasonable period of time thereafter in a separately-prepared report which will be submitted to OAL for publication in the *New Jersey Register*.

Social Impact

The IHC Board anticipates a positive social impact as a result of the proposed amendments. Amending the standard plan forms and B&E Plan specimen in order to comply with State as well as Federal laws will make it easier for individuals to understand their benefits, and assure greater carrier consistency in administration of the benefits. The anti-cancer prescription drug mandate is effective July 15, 2012 and applies to standard plans issued or renewed on or after such date. Recognizing that carrier administration of the benefits required by the law may vary from one carrier to another the Board proposes allowing carriers to include

text that describes the carrier-specific process. Consumers will benefit from the clarity the Board-created provision as well as any carrier-drafted provisions affords. Consumers will have information to enable them to understand how to access the benefits required by the law. The preventive care mandate under PPACA is effective August 1, 2012 and applies to standard plans and B&E plans issued or renewed on or after such date. The new definition of “preventive care” is very broad. Since there is no cost sharing associated with preventive care it is expected that more consumers will take advantage of preventive care services. The appeals process was effective January 1, 2012. Since the text in the standard plans and B&E specimen plan directs carriers to include an appeals provision consistent with the requirements of N.J.A.C. 11:24-8.5 et seq. or N.J.A.C. 11:24A-3.4 et seq., as appropriate, the Board believes carriers are already using appropriate appeals provisions. The proposed amendment specifies that the process for individual plans is a two-stage process.

Economic Impact

The IHC Board anticipates a moderately adverse economic impact from these proposed amendments. Each of the mandated benefits is expected to result in some increased medical costs for carriers, which will lead to increased premiums for consumers, although the specific cost of each new benefit may be relatively modest.

On the other hand, there are some significant additional benefits for consumers. Although the anti-cancer prescription drug benefit is targeted to cancer patients, everyone covered under an individual standard plan will have the opportunity to use the proposed expansions in benefits for preventive care services. It is often argued that better utilization of preventive care services will result in reduced utilization of more intensive and costly treatments for conditions that are avoidable or subject to mitigation through preventive actions.

The IHC Board does not expect carriers will need to avail themselves of any professional services beyond those they already utilize as part of their daily operations in order to successfully comply with these proposed amendments. The IHC Board does not expect any specific impact upon its own administrative expenses related to these proposed amendments.

Federal Standards Statement

The proposed amendments comply with PPACA. The rules do not expand upon the requirements set forth in the Federal law. There are no other Federal laws that apply to these amendments.

Jobs Impact

The IHC Board does not anticipate that any jobs will be generated or lost as a result of the proposed amendments. Commenters may submit data or studies on the potential jobs impact of the proposed amendments together with their comments on other aspects of the proposal.

Agricultural Industry Impact

The IHC Board does not believe the proposed amendments will have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed amendments do not apply to “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.. 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.

Housing Affordability Impact

The IHC Board does not believe the proposed amendments will have an impact on housing affordability in this State in that the proposed amendments relate to the benefit levels and terms of standard health benefits plans offered in New Jersey for purchase by individuals.

Smart Growth Development Impact

The IHC Board does not believe the proposed amendments will have an impact on the number of housing units or the availability of affordable housing in the State, or that the proposal will have an affect on smart growth development in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments relate to the benefit levels and terms of standard health benefits plans offered in New Jersey.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):