



State of New Jersey

DEPARTMENT OF BANKING AND INSURANCE
SMALL EMPLOYER HEALTH BENEFITS PROGRAM
PO Box 325
TRENTON, NJ 08625-0325

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

TEL (609) 633-1882
FAX (609) 633-2030

THOMAS B. CONSIDINE
Commissioner

ADVISORY BULLETIN 10-SEH-04

June 1, 2010

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

From: Ellen DeRosa
Executive Director

Re: Requirements to offer coverage to a small employer

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 whether carriers offering coverage in the small employer market are required, under the terms of the small employer law (N.J.S.A. 17B:27A-17 et seq), to issue a small employer health benefits plan to an employer who either already has a health benefits plan for the employees or who is concurrently securing a health benefits plan for the employees. Although SEH Board discussed this question several times in the past the SEH Board believed the question should again be considered.

The Law

N.J.S.A. 17B:27A-18 provides that “[c]arriers shall offer coverage to all eligible employees of small employers and their dependents.” As the requirement is more commonly expressed, coverage is guaranteed issue.

N.J.S.A. 17B:2A-24 specifies the standards for a carrier’s acceptance of a small employer group. This section of the law addresses a 75% participation requirement as well as provides for participation credit for coverage under a spouse’s health benefits coverage, Medicare, Medicaid NJ FamilyCare or another group health benefits plan.

What Does the Law Mean?

The SEH Board believes the language of the law supports more than one interpretation. The law could be read as requiring carriers to allow small employers to purchase more than one policy so long as the 75% participation requirement is satisfied. The law could

also be read as allowing carriers to limit the number of policies a carrier issues to small employers.

For a number of years the SEH Board has favored the interpretation that requires carriers to allow small employers to purchase more than one policy, where the multiple policies may be from one or multiple carriers, provided the 75% participation requirement is satisfied when considering all of the policies.

When the SEH Board recently considered the two possible interpretations of the law the SEH Board determined that a better reading of the law from a public policy perspective would be to favor the interpretation that allows carriers to limit the number of policies a carrier issues to a small employer.

By majority vote the SEH Board passed the following motion:

A primary carrier (which is a carrier that issues to a small employer group satisfying the 75% participation requirement) is required to issue at least one health benefits plan to an eligible small employer group. A second carrier may choose whether or not to issue an additional plan or plans to that eligible small employer.

The Impact on Small Employers

For policies issued on or after September 1, 2010 a primary carrier must issue at least one health benefits policy to an eligible small employer group. Whether the carrier as the primary carrier issues more than one policy depends on the underwriting guidelines each carrier has established which define the circumstances under which the carrier will issue only one policy and the circumstances under which the carrier will issue more than one policy. Since a second carrier may choose whether or not to issue a policy to a small employer the SEH Board asked carriers to identify circumstances under which the carrier, as second carrier will issue a policy to a small employer where another carrier has 75% or more of the group.

The SEH Board has asked carriers to provide their primary carrier and second carrier underwriting guidelines. As carriers provide such guidelines and any revisions to such guidelines to the SEH Board they will be posted on the SEH Board's website under the shopping for insurance section. http://www.state.nj.us/dobi/division_insurance/ihcseh/shop_seh.htm

Impact on Inforce Policies

Small employer policies are guaranteed renewable except as provided at N.J.S.A. 17B:27A-23. If a small employer currently offers multiple policies from one or multiple carriers such multiple policies may be renewed provided there are *no* changes made to the policies on renewal. If the employer wishes to amend one or more of the policies the issuance of such new policies will be subject to the carrier's underwriting rules as discussed above. It is possible a requested plan change will be consistent with the carrier's underwriting guidelines and the new plan will be issued. It is also possible a requested change will result in the carrier's underwriting guidelines not being satisfied meaning the carrier will not write the new policy.

Example. An employer who employs 12 employees has an HMO covering 4 employees and a POS covering 6 employees with one carrier and a PPO covering 1 employee with another carrier. 1 employee waived due to spousal coverage. The renewal date is December 1, 2010.

Scenario 1: The employer makes no changes to any of the policies. The 3 policies are renewed.

Scenario 2: The employer requests to amend the POS policy. The carrier issuing the POS plan reviews the request against the carrier's established primary carrier underwriting guidelines. If such guidelines allow the POS and HMO plans from the same carrier the amendment will be made and the employer retains 3 policies. Otherwise the POS plan is non-renewed and the employer retains 2 policies. Alternatively the employer may elect to retain the un-amended POS plan with the HMO and PPO plans.

Scenario 3: The employer requests to amend the PPO policy. The carrier issuing the PPO plan reviews the request against the carrier's established second carrier underwriting guidelines. If such guidelines allow the carrier to issue the coverage as the second carrier the amendment will be made and the employer retains 3 policies. Otherwise the PPO plan is non-renewed and the employer retains the 2 policies from the primary carrier.

PARTICIPATION EXAMPLES

➤A carrier does not have to provide participation credit for eligible employees who waive enrollment in the carrier's plan because the employees have coverage issued to the same employer by another carrier.

➤A carrier must provide participation credit eligible employees who waive enrollment in the carrier's plan because the eligible employee is covered:

- By Medicare
- By Medicaid or NJ FamilyCare
- By another employer's group health benefits plan, or
- As a dependent by a spouse's group health benefits plan.

No carrier may state that one or more of these waivers fails to count toward meeting the 75% participation requirement.

➤A carrier may not require that 75% participation be met with just that carrier.

Some examples follow.

EXAMPLE 1

Mike's Bike Shop has 12 employees working 25 or more hours per week.
75% = 9 eligible employees.

2 eligible employees enroll for Carrier X

3 eligible employees submit waivers because they have Medicare

4 eligible employees submit waivers because they have spousal group coverage

3 eligible employees enroll for Carrier Y

Carrier X must issue coverage since the group meets 75% participation (2+3+4=9).

Carrier Y must issue coverage since the group not only meets but exceeds 75% participation (3+4+3=10).

This example illustrates the possibility that two carriers could be "primary" carriers. Depending on the group size and the number of valid waivers there might even be three "primary" carriers.

EXAMPLE 2

Mike's Bike Shop has 4 employees working 25 or more hours per week.
75% = 3 eligible employees.

- 1 eligible employee enrolls for Carrier X
- 1 eligible employee submits a waiver because the employee has coverage under another group plan with a different employer
- 1 eligible employee submits a waiver because the employee has spousal group coverage
- 1 eligible employee simply waives coverage

Carrier X must issue coverage since the group meets 75% participation (1+1+1=3).

EXAMPLE 3

Mike's Bike Shop has 12 employees working 25 or more hours per week.
75% = 9 eligible employees.

- 2 eligible employees enroll for Carrier X
- 2 eligible employees submit a waiver because they have Medicare coverage
- 2 eligible employees submit a waiver because they have spousal group coverage
- 3 eligible employees enroll for Carrier Y
- 3 eligible employees simply waive coverage

Carrier X declines to issue coverage since the group fails to meet 75% participation (2+2+2=6).

Carrier Y declines to issue coverage since the group fails to meet 75% participation (2+2+3=7).

This example illustrates a situation where the employees enrolling for coverage need to be under the same carrier's plan in order to meet participation.

EXAMPLE 4

Mike's Bike Shop has 8 employees working 25 or more hours per week.
75% = 6 eligible employees.

2 eligible employees enroll for Carrier X

1 eligible employee submits a waiver because the employee has coverage under another group plan with a different employer

3 eligible employees submit a waiver because they have spousal group coverage

1 eligible employee simply waives coverage

1 eligible employee enrolls for Carrier Y.

Carrier X must issue coverage since the group meets 75% participation (2+1+3=6).

Carrier Y declines to issue coverage since the group fails to meet 75% participation (1+3+1=5).

Small Group Carrier Underwriting Guidelines

Please refer to [Advisory Bulletin 10-SEH-04](#)

AmeriHealth

(Guidelines updated July 16, 2010)

Effective September 1, 2010

Scenario 1 – Primary Carrier with 75% or more participation:

- Participation to determine Primary Carrier status will be based on number of employees enrolled in the employer sponsored AmeriHealth plan(s), including spousal waivers, Medicare waiver, etc., but will not include enrollment in other carrier plan offerings by the employer.
- A minimum 75% participation will be based on number of employees enrolled in the employer sponsored AmeriHealth plan(s), including spousal waivers, Medicare waiver, etc.
- Groups will be allowed up to four (4) AmeriHealth plan options, exclusive of “class out” options.
- Plan options cannot differ solely by the Prescription Drug plan design, network, referral option, or out of network benefits.
- The number of plan options must be less than the number of enrolled employees and there cannot be plan options with no enrollment.
- Groups must have at least 2 but less than 51 eligible employees.

Scenario 2 – Secondary Carrier with less than 75% participation:

- Will not issue.

Small Group Carrier Underwriting Guidelines

Please Refer to Advisory Bulletin 10-SEH-04

Aetna

Effective September 1, 2010

I. Primary carrier:

A. Aetna would issue only one plan when:

- Only 1 person in a group enrolls.
- All eligible employees elect to enroll in the same Aetna plan (e.g., 2 Aetna plans are offered to the group, but everyone chooses to enroll in the same plan).

B. Aetna will issue more than one plan when:

- Aetna would allow customers to purchase 2 plans provided that at least 1 employee enrolls in each plan and the 2 plans have different medical plan features.
- Aetna also would allow customers to purchase 3 plans provided that:
 - at least 1 employee enrolls in each plan;
 - at least 1 plan is a qualified high deductible plan; and
 - the 3 plans have different medical plan features.
- Subject to the foregoing criteria, Aetna would offer a plan from an affiliated carrier.

Second carrier:

- ##### A
- Aetna does not intend to issue coverage to an employer where another carrier has 75% or more of the group. To further clarify, Aetna only intends to issue coverage to an employer if Aetna is the “primary” carrier (i.e., Aetna has 75% or more of the group).

Small Group Carrier Underwriting Guidelines

Please Refer to Advisory Bulletin 10-SEH-04

CIGNA

(Guidelines updated July 16, 2010)

Effective September 1, 2010

For small employer groups that offer CIGNA HealthCare coverage to their employees, CIGNA requires that at least 75% of the small employer's eligible employees participate in coverage as a condition of enrollment. When calculating participation, the following types of coverage will be considered valid waivers:

- Spousal/Domestic Partner Coverage under other group health coverage
- Medicare, Medicaid, CHAMPUS or other Federal programs

If an employee waives coverage for any of the reasons listed above, that employee will count toward CIGNA's Small Group Participation requirements.

In all circumstances CIGNA will allow an employer to offer more than one CIGNA plan however CIGNA will not allow an employer to keep a plan open if there is no active membership enrolled on that plan.

CIGNA will not issue coverage to a small New Jersey employer group unless a minimum of 75% of all eligible employees enroll (i.e. secondary carrier is not allowed)."

Small Group Carrier Underwriting Guidelines

Please Refer to Advisory Bulletin 10-SEH-04

Horizon Blue Cross Blue Shield of New Jersey and Horizon Healthcare of New Jersey, Inc. (collectively “**Horizon BCBSNJ**”)

(Guidelines added/updated August 9, 2010)

Effective September 1, 2010

Primary Carrier

Effective September 1, 2010, Horizon BCBSNJ will only enroll a small employer group if that group places 75% or more of its eligible employees with Horizon BCBSNJ. Participation will be based on all eligible employees enrolled including all valid waivers (i.e., spousal waivers, Medicare, Medicaid, New Jersey FamilyCare, employee covered under another group health benefits plan). We will no longer consider employees covered under a plan with another carrier offered by the small employer as a valid waiver.

A small employer group may choose two health benefit plans from Horizon BCBSNJ (three, if one of the plans is a Horizon BCBSNJ health savings account).

- The medical plan types must be different (e.g., PPO and HMO, PPO and DA, DA and HMO), except for HMO plans where we will allow two HMO offerings within the same small group.
- Multiple plans are only allowed if at least one employee enrolls in each plan.
- A group may not choose to offer the same medical plan type with different pharmacy options.
- Regardless of class carve-outs, the total number of plans will be counted at the group level.
- The total number of plans allowed may be selected from either Horizon BCBSNJ, Horizon Healthcare of New Jersey, Inc. (Horizon HMO) or both.
- We will not offer or maintain a plan option that does not have enrollment.

Note: Underwriting rules are subject to change with at least 60 days advance notice.

Second Carrier

Horizon BCBSNJ will **not** offer coverage as a second carrier.

Small Group Carrier Underwriting Guidelines

Please Refer to Advisory Bulletin 10-SEH-04

Oxford

Effective September 1, 2010

Sole carrier

Participation: 75% net of valid waivers (Medicare, Medicaid and Spousal Coverage) **and** Oxford must be the sole carrier offered.

Class carve-Outs: Allowed only for classes that have no other coverage

Multi-Option: Dual and Triple Option will be allowed.

Form Requirements: Employer Certification and HSA Certificate of Understanding

Tax Documents: WR30 or other standardly accepted forms

Grace Period for Forms: 5 days from pended receipt date

Action if forms not provided as required: Group rejected/terminated

Renewal Requirements

As above with recertification of participation and payroll/tax status and all other requirements met.

Plan reserves the right to audit groups that do not respond to requests for information and to terminate groups either on the basis of audit results or in the event that necessary documentation is not provided on a timely basis.

Grandfathered business will not be required to give up currently in place multiple plan/multiple carrier arrangements until such time as a plan change is requested and approved. The certification/documentation requirements apply to all renewals.