

[First Reprint]

SENATE, No. 1878

STATE OF NEW JERSEY
218th LEGISLATURE

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Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator TROY SINGLETON

District 7 (Burlington)

SYNOPSIS

“New Jersey Health Insurance Premium Security Act;” establishes health insurance reinsurance plan.

CURRENT VERSION OF TEXT

As reported by the Senate Commerce Committee on February 15, 2018, with amendments.



(Sponsorship Updated As Of: 2/16/2018)

1 AN ACT concerning health insurance premiums and supplementing
2 P.L.1992, c.161 (C.17B:27A-2 et seq.).

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the “New Jersey
8 Health Insurance Premium Security Act.”

9

10 2. It is the intent of the Legislature to stabilize or reduce
11 premiums in the individual health insurance market by providing
12 reinsurance payments to health insurance carriers with respect to
13 claims for eligible individuals. The Commissioner of Banking and
14 Insurance, and the board of directors of the New Jersey Individual
15 Health Coverage Program, are authorized to apply for, accept and
16 receive federal funds to implement and sustain market stabilization
17 programs. Preliminary planning, analysis, and implementation to
18 effectuate the purposes of this act shall continue under the direction
19 of the commissioner and the board.

20

21 3. For the purposes of this act:

22 ¹**["Affiliated company" means a company in the same corporate**
23 **system as a parent, an industrial insured or a member organization by**
24 **virtue of common ownership, control, operation or management.]¹**

25 “Affordable Care Act” or “PPACA” means the federal Patient
26 Protection and Affordable Care Act, Pub.L.111-148, as amended by
27 the federal “Health Care and Education Reconciliation Act of 2010,”
28 Pub.L.111-152, and any federal rules and regulations adopted pursuant
29 thereto.

30 "Attachment point" means an amount as provided in subsection h.
31 of section 4 of this act.

32 "Benefit year" means the calendar year for which an eligible
33 carrier provides coverage through an individual health benefits plan.

34 "Board" means the board of directors of the New Jersey Individual
35 Health Coverage Program established pursuant to P.L.1992, c.161
36 (C.17B:27A-2 et seq.).

37 “Carrier” means any entity subject to the insurance laws and
38 regulations of this State, or subject to the jurisdiction of the
39 commissioner, that contracts or offers to contract to provide, deliver,
40 arrange for, pay for, or reimburse any of the costs of health care
41 services, including a sickness and accident insurance company, a
42 health maintenance organization, a hospital, medical or health service
43 corporation, or any other entity providing a plan of health insurance,

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCM committee amendments adopted February 15, 2018.

1 health benefits or health services. ¹【For purposes of this act, carriers
2 that are affiliated companies shall be treated as one carrier.】¹

3 “Claim” means a claim by a covered person for payment of
4 benefits under a contract for which the financial obligation for the
5 payment of the claim under the contract rests upon the carrier.

6 “Coinsurance rate” means the rate as provided in subsection i. of
7 section 4 of this act.

8 “Commissioner” means the Commissioner of Banking and
9 Insurance.

10 “Department” means the Department of Banking and Insurance.

11 “Eligible carrier” means a carrier that offers individual health
12 benefits plans in the State.

13 “Fund” means the New Jersey Health Insurance Premium Security
14 Fund created pursuant to section 10 of this act.

15 “Health benefits plan” means the same as that term is defined in
16 section 2 of P.L.1997, c.192 (26:2S-2).

17 “Payment parameters” means the attachment point, reinsurance
18 cap, and coinsurance rate for the plan.

19 “Plan” means the Health Insurance Premium Security Plan
20 established pursuant to section 4 of this act.

21 “Reinsurance cap” means the threshold amount as provided in
22 subsection j. of section 4 of this act.

23 “Reinsurance payment” means an amount paid by the board to an
24 eligible carrier under the plan.

25 “Third party administrator” means the same as that term is defined
26 by section 1 of P.L.2001, c.267 (C.17B:27B-1).

27

28 4. a. There is hereby established, and the ¹commissioner in
29 consultation with¹ the board shall administer, the Health Insurance
30 Premium Security Plan.

31 b. The ¹【board】 commissioner¹ may apply for any available
32 federal funding for the plan. All funds received by or appropriated to
33 the ¹【board】 commissioner¹ shall be deposited in the New Jersey
34 Health Insurance Premium Security Fund.

35 c. The ¹【board】 commissioner¹ shall collect data from carriers
36 necessary to determine reinsurance payments.

37 d. For each applicable benefit year, the ¹【board】 commissioner¹
38 shall notify carriers of reinsurance payments to be made for the
39 applicable benefit year no later than June 30 of the year following the
40 applicable benefit year.

41 e. On a quarterly basis during the applicable benefit year, the
42 ¹【board】 commissioner¹ shall provide each eligible carrier with the
43 calculation of total reinsurance payment requests.

44 f. By August 15 of the year following the applicable benefit year,
45 the ¹【board】 commissioner¹ shall disburse all applicable reinsurance
46 payments to an eligible carrier.

- 1 g. The ¹**board** commissioner¹ shall design and adjust the
2 payment parameters to ensure the payment parameters:
3 (1) will stabilize or reduce premium rates in the individual market;
4 (2) will increase participation in the individual market;
5 (3) mitigate the impact high-risk individuals have on premium
6 rates in the individual market;
7 (4) take into account any federal funding available for the plan;
8 (5) take into account the total amount available to fund the plan;
9 and
10 (6) include cost savings mechanisms related to the management of
11 health care services.
- 12 h. The attachment point for the plan is the threshold amount for
13 claims costs incurred by an eligible carrier for an enrolled individual's
14 covered benefits in a benefit year, beyond which the claims costs for
15 benefits are eligible for reinsurance payments. The attachment point
16 shall be set by the ¹**board at \$50,000 or more** commissioner¹, but
17 shall¹ not ¹**exceeding** exceed¹ the reinsurance cap.
- 18 i. The coinsurance rate for the plan is the rate at which the
19 ¹**board** commissioner¹ will reimburse an eligible carrier for claims
20 incurred for an enrolled individual's covered benefits in a benefit year
21 above the attachment point and below the reinsurance cap. The
22 coinsurance rate shall be set by the ¹**board at a rate between 50 and**
23 **70 percent** commissioner¹.
- 24 j. The reinsurance cap is the threshold amount for claims costs
25 incurred by an eligible carrier for an enrolled individual's covered
26 benefits, above which the claims costs for benefits are no longer
27 eligible for reinsurance payments. The reinsurance cap shall be set by
28 the ¹**board at \$250,000 or less** commissioner¹.
29
- 30 5. a. ¹**The board shall propose to the commissioner the payment**
31 **parameters for the next benefit year by January 15 of the year before**
32 **the applicable benefit year.]**¹ The commissioner shall ¹**review and**
33 **approve** determine¹ the payment parameters ¹**no later than 14 days**
34 **following the board's proposal. If the commissioner fails to approve**
35 **the payment parameters within 14 days following the board's proposal,**
36 **the proposed payment parameters are final and effective]**¹.
- 37 b. If the amount in the fund is not anticipated to be adequate to
38 fully fund the approved payment parameters as of July 1 of the year
39 before the applicable benefit year, ¹**the board, in consultation with]**¹
40 **the commissioner [,**¹ shall ¹**propose** revise the¹ payment
41 parameters within the available appropriations. The commissioner
42 shall permit an eligible carrier to revise an applicable rate filing based
43 on the final payment parameters for the next benefit year.
44
- 45 6. a. Each reinsurance payment shall be calculated with respect to
46 an eligible carrier's incurred claims costs for an individual enrollee's
47 covered benefits in the applicable benefit year. If the claims costs do

1 not exceed the attachment point, a reinsurance payment shall not be
2 made. If the claims costs exceed the attachment point, the reinsurance
3 payment shall be calculated as the product of the coinsurance rate and
4 the lesser of:

- 5 (1) the claims costs minus the attachment point; or
- 6 (2) the reinsurance cap minus the attachment point.

7 b. The ¹**[board]** commissioner¹ shall ensure that reinsurance
8 payments made to eligible carriers do not exceed the total amount paid
9 by the eligible carrier for any eligible claim. "Total amount paid of an
10 eligible claim" means the amount paid by the eligible carrier based
11 upon the allowed amount less any deductible, coinsurance, or co-
12 payment, as of the time the data are submitted or made accessible
13 under subsection e. of section 7 of this act.

14

15 7. a. An eligible carrier shall request reinsurance payments when
16 the eligible carrier's claims costs for an enrollee meet the criteria for
17 reinsurance payments.

18 b. An eligible carrier shall apply the payment parameters when
19 calculating amounts the carrier is eligible to receive from the plan.

20 c. An eligible carrier shall make requests for reinsurance payments
21 in accordance with any requirements established by the board.

22 d. An eligible carrier shall calculate the premium amount the
23 carrier would have charged for the applicable benefit year if the plan
24 was not in effect and submit this information as part of its rate filing.

25 e. In order to receive reinsurance payments, an eligible carrier
26 shall provide the ¹**[board]** commissioner¹ with access to the data
27 within the dedicated data environment established by the eligible
28 carrier under the federal risk adjustment program under 42 U.S.C.
29 s.18063. Eligible carriers shall submit an attestation to the ¹**[board]**
30 commissioner¹ asserting compliance with the dedicated data
31 environments, data requirements, establishment and usage of masked
32 enrollee identification numbers, and data submission deadlines.

33 f. An eligible carrier shall provide the access described in
34 subsection e. of this section for the applicable benefit year by April 30
35 of each year of the year following the end of the applicable benefit
36 year.

37 g. An eligible carrier shall maintain documents and records,
38 whether paper, electronic, or in other media, sufficient to substantiate
39 the requests for reinsurance payments made pursuant to this section for
40 a period of at least six years. An eligible carrier shall also make those
41 documents and records available upon request from the commissioner
42 for purposes of verification, investigation, audit, or other review of
43 reinsurance payment requests.

44 h. (1) The ¹**[board]** commissioner¹ may audit an eligible carrier
45 to assess its compliance with the requirements of this act. The eligible
46 carrier shall cooperate with an audit. If an audit results in a proposed
47 finding of material weakness or significant deficiency with respect to

1 compliance with any requirement of this act, the eligible carrier may
2 respond to the draft audit report within 30 days of the draft audit
3 report's issuance.

4 (2) Within 30 days of the issuance of the final audit report, if the
5 final audit results in a finding of material weakness or significant
6 deficiency with respect to compliance with any requirement of this act,
7 the eligible carrier shall:

8 (a) provide a written corrective action plan to the ¹**[board]**
9 commissioner¹ for approval;

10 (b) upon ¹**[board]** the commissioner's¹ approval, implement the
11 corrective action plan described; and

12 (c) provide the ¹**[board]** commissioner¹ with documentation of the
13 corrective actions taken.

14

15 8. The ¹**[board]** commissioner¹ shall keep an accounting for each
16 benefit year of all:

17 a. funds appropriated for reinsurance payments and administrative
18 and operational expenses;

19 b. requests for reinsurance payments received from eligible
20 carriers;

21 c. reinsurance payments made to eligible carriers; and

22 d. administrative and operational expenses incurred for the plan.

23

24 9. The commissioner shall apply to the United States Secretary of
25 Health and Human Services under 42 U.S.C. 18052 for a waiver of
26 applicable provisions of the Affordable Care Act with respect to health
27 insurance coverage in the State for a plan year beginning on or after
28 January 1, 2019, to effectuate the provisions of this act. ¹**[The board]**
29 If the waiver is approved and the commissioner accepts the waiver, the
30 commissioner¹, in consultation with the ¹**[commissioner]** board¹,
31 shall implement the plan to meet the waiver requirements in a manner
32 consistent with federal and State law as approved by the United States
33 Secretary of Health and Human Services. ¹The commissioner may
34 contract for actuarial services as necessary to implement the waiver
35 application required pursuant to this section.¹

36

37 10. a. The New Jersey Health Insurance Premium Security Fund
38 is hereby created in the State Treasury for the purposes of this act. This
39 fund shall be the repository for monies collected pursuant to this act
40 and other monies received as grants or otherwise appropriated for the
41 purposes of the this act.

42 b. All interest earned on the moneys that have been deposited into
43 the fund shall be retained in the fund and used for purposes consistent
44 with the fund.

45 c. The fund shall consist of all of the following:

1 (1) All moneys allocated by the State to effectuate the purposes of
2 this act, including funds collected pursuant to ¹~~["subsection d. of"]~~¹ this
3 section; and

4 (2) Federal payments received as a result of any waiver of
5 requirements granted or other arrangements agreed to by the United
6 States Secretary of Health and Human Services or other appropriate
7 federal officials.

8 d. For the purpose of providing the funds necessary to carry out
9 the provisions of this act, each carrier ¹~~and third party administrator~~¹
10 shall be assessed by the commissioner ¹~~["according to an assessment
11 methodology, and"]~~ in proportion to the claims paid by the carrier or
12 processed by the third party administrator, as appropriate, for covered
13 persons in this State and¹ at a time and for an amount as the
14 commissioner, in consultation with the board, finds necessary to
15 implement this act. ¹~~["The commissioner may apply a uniform
16 surcharge to all qualified health benefits plans , including plans
17 administered by third party administrators, as the board determines
18 necessary to effectuate the purposes of this act."]~~¹ The proceeds
19 therefrom shall be deposited into the fund ¹~~["and be used only to pay
20 for administrative and operational expenses that the board incurs in
21 order to carry out its responsibilities pursuant to this act"]~~¹. ¹~~The~~
22 amount collected pursuant to this subsection shall not exceed the
23 amount required to fund the plan, less any amounts in the fund
24 received from other sources.¹

25 e. Moneys in the fund shall only be used for the purposes
26 established in this act.

27

28 11. a. The commissioner shall present an annual report to the
29 Governor, and to the Legislature pursuant to section 2 of P.L.1991,
30 c.164 (C.52:14-19.1), which contains a summary of the operations of
31 the Health Insurance Premium Security Plan and the impact of the plan
32 on health insurance premiums. The report shall be made available to
33 the public.

34 b. The board shall submit to the commissioner and make available
35 to the public an annual report summarizing the plan operations for
36 each benefit year by posting the summary on the department website
37 and making the summary otherwise available.

38 c. (1) The ¹~~["board"]~~ commissioner¹ shall engage and cooperate
39 with an independent certified public accountant to perform an audit for
40 each benefit year of the plan, in accordance with generally accepted
41 auditing standards. The audit shall at a minimum:

42 (a) assess compliance with the requirements of this act; and

43 (b) identify any material weaknesses or significant deficiencies
44 and address manners in which to correct any such material weaknesses
45 or deficiencies.

46 (2) The ¹~~["board"]~~ commissioner¹, after receiving the completed
47 audit, shall:

1 (a) provide the ¹**["commissioner"] board**¹ the results of the audit
2 ¹excluding any proprietary information¹;

3 (b) ¹require the board¹ to identify to the commissioner any
4 material weakness or significant deficiency identified in the audit and
5 address in writing to the commissioner how the board ¹**["intends"]**
6 recommends¹ to correct any such material weakness or significant
7 deficiency in compliance with this subsection; and

8 (c) make available to the public a summary of the results of the
9 audit by posting the summary on the department website and making
10 the summary otherwise available, including any material weakness or
11 significant deficiency and how the ¹**["board"] commissioner**¹ intends to
12 correct the material weakness or significant deficiency.

13
14 ¹12. If a carrier violates any provision of this act, the
15 commissioner may, upon notice and hearing, assess a civil
16 administrative penalty in an amount not less than \$1,000 nor more than
17 \$10,000 for each day the carrier is in violation of this act. The penalty
18 may be recovered in a summary proceeding pursuant to the "Penalty
19 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).¹

20
21 ¹**["12.] 13.**¹ The ¹**["board and the"]**¹ commissioner, pursuant to the
22 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
23 and in consultation with ¹**["each other"]** the board¹, shall ¹**["each"]**¹
24 adopt such rules and regulations as may be necessary to effectuate the
25 purposes of this act.

26
27 ¹**["13.] 14.**¹ This act shall take effect immediately, except that
28 sections 1 through 8, 10 and 11 shall remain inoperative until the
29 Commissioner of Banking and Insurance is granted ¹and accepts¹ a
30 waiver pursuant to section 9 of this act, and the commissioner may
31 take any anticipatory administrative action in advance as necessary for
32 the implementation of this act.