

SENATE, No. 3810

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED MAY 30, 2019

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

SYNOPSIS

Revises certain permissible rating factors for premiums charged for individual and small employer health benefits plans.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning rating factors for certain health benefits plans
2 and amending P.L.1992, c.161 and P.L.1992, c.162.

3

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

6

7 1. Section 1 of P.L.1992, c.161 (C.17B:27A-2) is amended to
8 read as follows:

9 1. As used in sections 1 through 15, inclusive, of this act:

10 "Board" means the board of directors of the program.

11 "Carrier" means any entity subject to the insurance laws and
12 regulations of this State, or subject to the jurisdiction of the
13 commissioner, that contracts or offers to contract to provide,
14 deliver, arrange for, pay for, or reimburse any of the costs of health
15 care services, including a sickness and accident insurance company,
16 a health maintenance organization, a nonprofit hospital or health
17 service corporation, or any other entity providing a plan of health
18 insurance, health benefits or health services. For purposes of this
19 act, carriers that are affiliated companies shall be treated as one
20 carrier.

21 "Church plan" has the same meaning given that term under Title
22 I, section 3 of Pub.L.93-406, the "Employee Retirement Income
23 Security Act of 1974" (29 U.S.C. s.1002 (33)).

24 "Commissioner" means the Commissioner of Banking and
25 Insurance.

26 "Community rating" means a rating system in which the
27 premium for all persons covered by a contract is the same, based on
28 the experience of all persons covered by that contract, without
29 regard to age, sex, health status, occupation and geographical
30 location.

31 "Creditable coverage" means, with respect to an individual,
32 coverage of the individual under any of the following: a group
33 health plan; a group or individual health benefits plan; Part A or
34 Part B of Title XVIII of the federal Social Security Act (42 U.S.C.
35 s.1395 et seq.); Title XIX of the federal Social Security Act (42
36 U.S.C. s.1396 et seq.), other than coverage consisting solely of
37 benefits under section 1928 of Title XIX of the federal Social
38 Security Act (42 U.S.C.s.1396s); Chapter 55 of Title 10, United
39 States Code (10 U.S.C. s.1071 et seq.); a medical care program of
40 the Indian Health Service or of a tribal organization; a state health
41 benefits risk pool; a health plan offered under chapter 89 of Title 5,
42 United States Code (5 U.S.C. s.8901 et seq.); a public health plan as
43 defined by federal regulation; and a health benefits plan under
44 section 5(e) of the "Peace Corps Act" (22 U.S.C. s.2504(e)); or

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.

1 coverage under any other type of plan as set forth by the
2 commissioner by regulation.

3 Creditable coverage shall not include coverage consisting solely
4 of the following: coverage only for accident or disability income
5 insurance, or any combination thereof; coverage issued as a
6 supplement to liability insurance; liability insurance, including
7 general liability insurance and automobile liability insurance;
8 workers' compensation or similar insurance; automobile medical
9 payment insurance; credit only insurance; coverage for on-site
10 medical clinics; coverage, as specified in federal regulation, under
11 which benefits for medical care are secondary or incidental to the
12 insurance benefits; and other coverage expressly excluded from the
13 definition of health benefits plan.

14 "Department" means the Department of Banking and Insurance.

15 "Dependent" means the spouse, domestic partner as defined in
16 section 3 of P.L.2003, c.246 (C.26:8A-3), civil union partner as
17 defined in section 2 of P.L.2006, c.103 (C.37:1-29), or child of an
18 eligible person, subject to applicable terms of the individual health
19 benefits plan.

20 "Eligible person" means a person who is a resident who is not
21 eligible to be covered under a group health benefits plan, group
22 health plan, governmental plan, church plan, or Part A or Part B of
23 Title XVIII of the Social Security Act (42 U.S.C.s.1395 et seq.).

24 "Federally defined eligible individual" means an eligible person:
25 (1) for whom, as of the date on which the individual seeks coverage
26 under P.L.1992, c.161 (C.17B:27A-2 et al.), the aggregate of the
27 periods of creditable coverage is 18 or more months; (2) whose
28 most recent prior creditable coverage was under a group health
29 plan, governmental plan, church plan, or health insurance coverage
30 offered in connection with any such plan; (3) who is not eligible for
31 coverage under a group health plan, Part A or Part B of Title XVIII
32 of the Social Security Act (42 U.S.C.s.1395 et seq.), or a State plan
33 under Title XIX of the Social Security Act (42 U.S.C.s.1396 et seq.)
34 or any successor program, and who does not have another health
35 benefits plan, or hospital or medical service plan; (4) with respect to
36 whom the most recent coverage within the period of aggregate
37 creditable coverage was not terminated based on a factor relating to
38 nonpayment of premiums or fraud; (5) who, if offered the option of
39 continuation coverage under the COBRA continuation provision or
40 a similar State program, elected that coverage; and (6) who has
41 elected continuation coverage described in (5) above and has
42 exhausted that continuation coverage.

43 "Financially impaired" means a carrier which, after the effective
44 date of this act, is not insolvent, but is deemed by the commissioner
45 to be potentially unable to fulfill its contractual obligations, or a
46 carrier which is placed under an order of rehabilitation or
47 conservation by a court of competent jurisdiction.

1 "Governmental plan" has the meaning given that term under Title
2 I, section 3 of Pub.L.93-406, the "Employee Retirement Income
3 Security Act of 1974" (29 U.S.C.s.1002(32)) and any governmental
4 plan established or maintained for its employees by the Government
5 of the United States or by any agency or instrumentality of that
6 government.

7 "Group health benefits plan" means a health benefits plan for
8 groups of two or more persons.

9 "Group health plan" means an employee welfare benefit plan, as
10 defined in Title I, section 3 of Pub.L.93-406, the "Employee
11 Retirement Income Security Act of 1974" (29 U.S.C. s.1002 (1)), to
12 the extent that the plan provides medical care, and including items
13 and services paid for as medical care to employees or their
14 dependents directly or through insurance, reimbursement, or
15 otherwise.

16 "Health benefits plan" means a hospital and medical expense
17 insurance policy; health service corporation contract; hospital
18 service corporation contract; medical service corporation contract;
19 health maintenance organization subscriber contract; or other plan
20 for medical care delivered or issued for delivery in this State. For
21 purposes of this act, health benefits plan shall not include one or
22 more, or any combination of, the following: coverage only for
23 accident, or disability income insurance, or any combination
24 thereof; coverage issued as a supplement to liability insurance;
25 liability insurance, including general liability insurance and
26 automobile liability insurance; stop loss or excess risk insurance;
27 workers' compensation or similar insurance; automobile medical
28 payment insurance; credit-only insurance; coverage for on-site
29 medical clinics; and other similar insurance coverage, as specified
30 in federal regulations, under which benefits for medical care are
31 secondary or incidental to other insurance benefits. Health benefits
32 plan shall not include the following benefits if they are provided
33 under a separate policy, certificate or contract of insurance or are
34 otherwise not an integral part of the plan: limited scope dental or
35 vision benefits; benefits for long-term care, nursing home care,
36 home health care, community-based care, or any combination
37 thereof; and such other similar, limited benefits as are specified in
38 federal regulations. Health benefits plan shall not include hospital
39 confinement indemnity coverage if the benefits are provided under
40 a separate policy, certificate or contract of insurance, there is no
41 coordination between the provision of the benefits and any
42 exclusion of benefits under any group health benefits plan
43 maintained by the same plan sponsor, and those benefits are paid
44 with respect to an event without regard to whether benefits are
45 provided with respect to such an event under any group health plan
46 maintained by the same plan sponsor. Health benefits plan shall not
47 include the following if it is offered as a separate policy, certificate
48 or contract of insurance: Medicare supplemental health insurance

1 as defined under section 1882(g)(1) of the federal Social Security
2 Act (42 U.S.C.s.1395ss(g)(1)); and coverage supplemental to the
3 coverage provided under chapter 55 of Title 10, United States Code
4 (10 U.S.C. s.1071 et seq.); and similar supplemental coverage
5 provided to coverage under a group health plan.

6 "Health status-related factor" means any of the following factors:
7 health status; medical condition, including both physical and mental
8 illness; claims experience; receipt of health care; medical history;
9 genetic information; evidence of insurability, including conditions
10 arising out of acts of domestic violence; and disability.

11 "Individual health benefits plan" means: a. a health benefits plan
12 for eligible persons and their dependents; and b. a certificate issued
13 to an eligible person which evidences coverage under a policy or
14 contract issued to a trust or association, regardless of the situs of
15 delivery of the policy or contract, if the eligible person pays the
16 premium and is not being covered under the policy or contract
17 pursuant to continuation of benefits provisions applicable under
18 federal or State law.

19 Individual health benefits plan shall not include a certificate
20 issued under a policy or contract issued to a trust, or to the trustees
21 of a fund, which trust or fund is an employee welfare benefit plan,
22 to the extent the "Employee Retirement Income Security Act of
23 1974" (29 U.S.C. s.1001 et seq.) preempts the application of
24 P.L.1992, c.161 (C.17B:27A-2 et al.) to that plan.

25 "Medicaid" means the Medicaid program established pursuant to
26 P.L.1968, c.413 (C.30:4D-1 et seq.).

27 "Medical care" means amounts paid: (1) for the diagnosis, care,
28 mitigation, treatment, or prevention of disease, or for the purpose of
29 affecting any structure or function of the body; and (2)
30 transportation primarily for and essential to medical care referred to
31 in (1) above.

32 "Member" means a carrier that issues or has in force health
33 benefits plans in New Jersey. Member shall not include a carrier
34 whose combined average Medicare, Medicaid, and NJ FamilyCare
35 enrollment represents more than 75% of its average total enrollment
36 for all health benefits plans or whose combined Medicare,
37 Medicaid, and NJ FamilyCare net earned premium for the two-year
38 calculation period represents more than 75% of its total net earned
39 premium for the two-year calculation period.

40 "Modified community rating" means a rating system in which the
41 premium for all persons covered under a policy or contract for a
42 specific health benefits plan and a specific date of issue of that plan
43 is the same without regard to sex, health status, occupation,
44 geographical location or any other factor or characteristic of
45 covered persons, other than age.

46 The rating system shall provide that the premium rate charged by
47 the carrier for the highest rated individual or class of individuals
48 shall not be greater than **【350%】** 300% of the premium rate charged

1 for the lowest rated individual or class of individuals purchasing the
2 same individual health benefits plan. The rate differential among
3 the premium rates charged to individuals covered under the same
4 individual health benefits plans shall be based on the actual or
5 expected experience of persons covered under that plan; provided,
6 however, that the rate differential may also be based upon age. The
7 factors upon which the rate differential is applied shall be consistent
8 with regulations promulgated by the commissioner, which shall
9 include age classifications established [, at a minimum, in five-
10 year] in one-year increments. There may be a reasonable
11 differential among the premium rates charged for different family
12 structure rating tiers within an individual health benefits plan or for
13 different health benefits plans offered by the carrier.

14 "Net earned premium" means the premiums earned in this State
15 on health benefits plans, less return premiums thereon and
16 dividends paid or credited to policy or contract holders on the
17 health benefits plan business. Net earned premium shall include the
18 aggregate premiums earned on the carrier's insured group and
19 individual business and health maintenance organization business,
20 including premiums from any Medicare, Medicaid, or NJ
21 FamilyCare contracts with the State or federal government, but
22 shall not include premiums earned from contracts funded pursuant
23 to the "Federal Employee Health Benefits Act of 1959," 5 U.S.C.
24 ss.8901-8914, any excess risk or stop loss insurance coverage
25 issued by a carrier in connection with any self insured health
26 benefits plan, or Medicare supplement policies or contracts.

27 "NJ FamilyCare" means the NJ FamilyCare Program established
28 pursuant to P.L.2005, c.156 (C.30:4J-8 et al.).

29 "Non-group person life year" means coverage of a person for 12
30 months by an individual health benefits plan or conversion policy or
31 contract subject to P.L.1992, c.161 (C.17B:27A-2 et al.), Medicare
32 cost or risk contract or Medicaid contract.

33 "Open enrollment" means the offering of an individual health
34 benefits plan to any eligible person on a guaranteed issue basis,
35 pursuant to procedures established by the board.

36 "Plan of operation" means the plan of operation of the program
37 adopted by the board pursuant to this act.

38 "Plan sponsor" shall have the meaning given that term under
39 Title I, section 3 of Pub.L.93-406, the "Employee Retirement
40 Income Security Act of 1974" (29 U.S.C. s.1002 (16)(B)).

41 "Preexisting condition" means a condition that, during a
42 specified period of not more than six months immediately preceding
43 the effective date of coverage, had manifested itself in such a
44 manner as would cause an ordinarily prudent person to seek medical
45 advice, diagnosis, care or treatment, or for which medical advice,
46 diagnosis, care or treatment was recommended or received as to that
47 condition or as to a pregnancy existing on the effective date of
48 coverage.

1 "Program" means the New Jersey Individual Health Coverage
2 Program established pursuant to this act.

3 "Resident" means a person whose primary residence is in New
4 Jersey and who is present in New Jersey for at least six months of
5 the calendar year, or, in the case of a person who has moved to New
6 Jersey less than six months before applying for individual health
7 coverage, who intends to be present in New Jersey for at least six
8 months of the calendar year.

9 "Two-year calculation period" means a two calendar year period,
10 the first of which shall begin January 1, 1997 and end December 31,
11 1998.

12 (cf: P.L.2009, c.293, s.1)

13

14 2. Section 9 of P.L.1992, c.162 (C.17B:27A-25) is amended to
15 read as follows:

16 9. a. (1) (Deleted by amendment, P.L.1997, c.146).

17 (2) (Deleted by amendment, P.L.1997, c.146).

18 (3) (a) For all policies or contracts providing health benefits
19 plans for small employers issued pursuant to section 3 of P.L.1992,
20 c.162 (C.17B:27A-19), and including policies or contracts offered
21 by a carrier to a small employer who is a member of a Small
22 Employer Purchasing Alliance pursuant to the provisions of
23 P.L.2001, c.225 (C.17B:27A-25.1 et al.) the premium rate charged
24 by a carrier to the highest rated small group purchasing a small
25 employer health benefits plan issued pursuant to section 3 of
26 P.L.1992, c.162 (C.17B:27A-19) shall not be greater than 200% of
27 the premium rate charged for the lowest rated small group
28 purchasing that same health benefits plan; provided, however, that
29 the only factors upon which the rate differential may be based are
30 age**【**, gender**】** and geography. Such factors shall be applied in a
31 manner consistent with regulations adopted by the commissioner.

32 **【**For the purposes of this paragraph (3), policies or contracts offered
33 by a carrier to a small employer who is a member of a Small
34 Employer Purchasing Alliance shall be rated separately from the
35 carrier's other small employer health benefits policies or contracts.**】**

36 (b) A health benefits plan issued pursuant to subsection j. of
37 section 3 of P.L.1992, c.162 (C.17B:27A-19) shall be rated in
38 accordance with the provisions of section 7 of P.L.1995, c.340
39 (C.17B:27A-19.3), for the purposes of meeting the requirements of
40 this paragraph.

41 (4) (Deleted by amendment, P.L.1994, c.11).

42 (5) Any policy or contract issued after January 1, 1994 to a
43 small employer who was not previously covered by a health
44 benefits plan issued by the issuing small employer carrier, shall be
45 subject to the same premium rate restrictions as provided in
46 paragraph (3) of this subsection, which rate restrictions shall be
47 effective on the date the policy or contract is issued.

1 (6) The board shall establish, pursuant to section 17 of
2 P.L.1993, c.162 (C.17B:27A-51):

3 (a) up to six geographic territories, none of which is smaller
4 than a county; and

5 (b) age classifications which[, at a minimum,] shall be in [five-
6 year] one-year increments.

7 b. (Deleted by amendment, P.L.1993, c.162).

8 c. (Deleted by amendment, P.L.1995, c.298).

9 d. Notwithstanding any other provision of law to the contrary,
10 this act shall apply to a carrier which provides a health benefits plan
11 to one or more small employers through a policy issued to an
12 association or trust of employers.

13 A carrier which provides a health benefits plan to one or more
14 small employers through a policy issued to an association or trust of
15 employers after the effective date of P.L.1992, c.162 (C.17B:27A-
16 17 et seq.), shall be required to offer small employer health benefits
17 plans to non-association or trust employers in the same manner as
18 any other small employer carrier is required pursuant to P.L.1992,
19 c.162 (C.17B:27A-17 et seq.).

20 e. Nothing contained herein shall prohibit the use of premium
21 rate structures to establish different premium rates for individuals
22 and family units.

23 f. No insurance contract or policy subject to this act, including
24 a contract or policy entered into with a small employer who is a
25 member of a Small Employer Purchasing Alliance pursuant to the
26 provisions of P.L.2001, c.225 (C.17B:27A-25.1 et al.), may be
27 entered into unless and until the carrier has made an informational
28 filing with the commissioner of a schedule of premiums, not to
29 exceed 12 months in duration, to be paid pursuant to such contract
30 or policy, of the carrier's rating plan and classification system in
31 connection with such contract or policy, and of the actuarial
32 assumptions and methods used by the carrier in establishing
33 premium rates for such contract or policy.

34 g. (1) Beginning January 1, 1995, a carrier desiring to increase
35 or decrease premiums for any policy form or benefit rider offered
36 pursuant to subsection i. of section 3 of P.L.1992, c.162
37 (C.17B:27A-19) subject to this act may implement such increase or
38 decrease upon making an informational filing with the
39 commissioner of such increase or decrease, along with the actuarial
40 assumptions and methods used by the carrier in establishing such
41 increase or decrease, provided that the anticipated minimum loss
42 ratio for all policy forms shall not be less than 80% of the premium
43 therefor as provided in paragraph (2) of this subsection. The
44 commissioner may disapprove any informational filing on a finding
45 that it is incomplete and not in substantial compliance with
46 P.L.1992, c.162 (C.17B:27A-17 et seq.), or that the rates are
47 inadequate or unfairly discriminatory. Until December 31, 1996,
48 the informational filing shall also include the carrier's rating plan

1 and classification system in connection with such increase or
2 decrease.

3 (2) Each calendar year, a carrier shall return, in the form of
4 aggregate benefits for all of the standard policy forms offered by
5 the carrier pursuant to subsection a. of section 3 of P.L.1992, c.162
6 (C.17B:27A-19), at least 80% of the aggregate premiums collected
7 for all of the standard policy forms, **[other than]** including alliance
8 policy forms, and at least 80% of the aggregate premiums collected
9 for all of the non-standard policy forms during that calendar year.
10 **[A carrier shall return at least 80% of the premiums collected for all**
11 **of the alliances during that calendar year, which loss ratio may be**
12 **calculated in the aggregate for all of the alliances or separately for**
13 **each alliance.]** Carriers shall annually report, no later than August
14 1st of each year, the loss ratio calculated pursuant to this section for
15 all of the standard**[, other than alliance]** policy forms**[,]** and non-
16 standard policy forms **[and alliance policy forms]** for the previous
17 calendar year**[, provided that a carrier may annually report the loss**
18 **ratio calculated pursuant to this section for all of the alliances in the**
19 **aggregate or separately for each alliance]**. In each case where the
20 loss ratio fails to substantially comply with the 80% loss ratio
21 requirement, the carrier shall issue a dividend or credit against
22 future premiums for all policyholders with the standard**[, other than**
23 **alliance policy forms,]** and nonstandard policy forms **[or alliance**
24 **policy forms]**, as applicable, in an amount sufficient to assure that
25 the aggregate benefits paid in the previous calendar year plus the
26 amount of the dividends and credits shall equal 80% of the
27 aggregate premiums collected for the respective policy forms in the
28 previous calendar year. All dividends and credits must be
29 distributed by December 31 of the year following the calendar year
30 in which the loss ratio requirements were not satisfied. The annual
31 report required by this paragraph shall include a carrier's calculation
32 of the dividends and credits applicable to standard**[, other than**
33 **alliance policy forms,]** and non-standard policy forms **[and alliance**
34 **policy forms]**, as well as an explanation of the carrier's plan to issue
35 dividends or credits. The instructions and format for calculating
36 and reporting loss ratios and issuing dividends or credits shall be
37 specified by the commissioner by regulation. Such regulations shall
38 include provisions for the distribution of a dividend or credit in the
39 event of cancellation or termination by a policyholder. For
40 purposes of this paragraph, "alliance policy forms" means policies
41 purchased by small employers who are members of Small Employer
42 Purchasing Alliances.

43 (3) The loss ratio of a health benefits plan issued pursuant to
44 subsection j. of section 3 of P.L.1992, c.162 (C.17B:27A-19) shall
45 be calculated in accordance with the provisions of section 7 of
46 P.L.1995, c.340 (C.17B:27A-19.3), for the purposes of meeting the
47 requirements of this subsection.

- 1 h. (Deleted by amendment, P.L.1993, c.162).
2 i. The provisions of this act shall apply to health benefits plans
3 which are delivered, issued for delivery, renewed or continued on or
4 after January 1, 1994.
5 j. (Deleted by amendment, P.L.1995, c.340).
6 k. A carrier who negotiates a reduced premium rate with a
7 Small Employer Purchasing Alliance for members of that alliance
8 shall provide a reduction in the premium rate filed in accordance
9 with paragraph (3) of subsection a. of this section, expressed as a
10 percentage, which reduction shall be based on volume or other
11 efficiencies or economies of scale and shall not be based on health
12 status-related factors.
13 (cf: P.L.2008, c.38, s.24)
14
15 3. This act shall take effect on the 90th day next following
16 enactment.
17
18

19 STATEMENT
20

21 This bill would bring New Jersey statutes that govern the rating
22 factors used by health insurance carriers to charge premiums for
23 health benefits plans in the individual and small employer markets
24 into compliance with certain provisions of the federal Affordable
25 Care Act (ACA). Current New Jersey statutes allow premiums for
26 health benefits plans offered in these markets to vary according to
27 certain factors and within certain ranges in ways that are not in
28 compliance with the requirements of the ACA.

29 Specifically, with respect to plans offered through the New
30 Jersey Individual Health Coverage Program, the bill: (1) provides
31 that the premium rate charged by a carrier for the highest rated
32 individual or class of individuals shall not exceed 300 percent,
33 instead of 350 percent as provided in current law, of the premium
34 rate charged for the lowest rated individual or class of individuals
35 purchasing the same individual health benefits plan; and (2)
36 requires rate differentials based on age to use classifications
37 established in one-year increments, instead of five-year increments
38 as provided in current law.

39 With respect to plans offered through the Small Employer Health
40 Benefits Program, the bill: (1) removes gender as a permissible
41 rating factor; (2) eliminates separate rating treatment for small
42 employer purchasing alliances for determining permissible rate
43 differentials between the highest rated and lowest rated plans, and
44 for determining compliance with medical loss ratios; and (3)
45 requires rate differentials based on age to use classifications
46 established in one-year increments, instead of five-year increments
47 as provided in current law.

S3810 SINGLETON, LAGANA

11

1 By amending these statutes that govern the offering of individual
2 and small employer plans in the State, the bill brings New Jersey
3 law into conformance with certain provisions of the ACA.