

SENATE, No. 3811

STATE OF NEW JERSEY
218th LEGISLATURE

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Sponsored by:

Senator VIN GOPAL

District 11 (Monmouth)

Senator PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

SYNOPSIS

Revises definition of small employer under New Jersey Small Employer Health Benefits Program.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the definition of small employer in the New
2 Jersey Small Employer Health Benefits Program and amending
3 P.L.1992, c.162.

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

7
8 1. Section 1 of P.L.1992, c.162 (C.17B:27A-17) is amended to
9 read as follows.

10 1. As used in this act:

11 "Actuarial certification" means a written statement by a member
12 of the American Academy of Actuaries or other individual
13 acceptable to the commissioner that a small employer carrier is in
14 compliance with the provisions of section 9 of P.L.1992, c.162
15 (C.17B:27A-25), based upon examination, including a review of the
16 appropriate records and actuarial assumptions and methods used by
17 the small employer carrier in establishing premium rates for
18 applicable health benefits plans.

19 "Anticipated loss ratio" means the ratio of the present value of
20 the expected benefits, not including dividends, to the present value
21 of the expected premiums, not reduced by dividends, over the entire
22 period for which rates are computed to provide coverage. For
23 purposes of this ratio, the present values must incorporate realistic
24 rates of interest which are determined before federal taxes but after
25 investment expenses.

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

27 "Carrier" means any entity subject to the insurance laws and
28 regulations of this State, or subject to the jurisdiction of the
29 commissioner, that contracts or offers to contract to provide,
30 deliver, arrange for, pay for, or reimburse any of the costs of health
31 care services, including an insurance company authorized to issue
32 health insurance, a health maintenance organization, a hospital
33 service corporation, medical service corporation and health service
34 corporation, or any other entity providing a plan of health
35 insurance, health benefits or health services. The term "carrier"
36 shall not include a joint insurance fund established pursuant to State
37 law. For purposes of this act, carriers that are affiliated companies
38 shall be treated as one carrier, except that any insurance company,
39 health service corporation, hospital service corporation, or medical
40 service corporation that is an affiliate of a health maintenance
41 organization located in New Jersey or any health maintenance
42 organization located in New Jersey that is affiliated with an
43 insurance company, health service corporation, hospital service
44 corporation, or medical service corporation shall treat the health
45 maintenance organization as a separate carrier.

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 "Church plan" has the same 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(33)).

4 "Commissioner" means the Commissioner of Banking and
5 Insurance.

6 "Community rating" or "community rated" means a rating
7 methodology in which the premium charged by a carrier for all
8 persons covered by a policy or contract form is the same based upon
9 the experience of the entire pool of risks covered by that policy or
10 contract form without regard to age, gender, health status, residence
11 or occupation.

12 "Creditable coverage" means, with respect to an individual,
13 coverage of the individual under any of the following: a group
14 health plan; a group or individual health benefits plan; Part A or
15 part B of Title XVIII of the federal Social Security Act (42 U.S.C.
16 s.1395 et seq.); Title XIX of the federal Social Security Act (42
17 U.S.C. s.1396 et seq.), other than coverage consisting solely of
18 benefits under section 1928 of Title XIX of the federal Social
19 Security Act (42 U.S.C. s.1396s); chapter 55 of Title 10, United
20 States Code (10 U.S.C. s.1071 et seq.); a medical care program of
21 the Indian Health Service or of a tribal organization; a state health
22 benefits risk pool; a health plan offered under chapter 89 of Title 5,
23 United States Code (5 U.S.C. s.8901 et seq.); a public health plan as
24 defined by federal regulation; a health benefits plan under section
25 5(e) of the "Peace Corps Act" (22 U.S.C. s.2504(e)); or coverage
26 under any other type of plan as set forth by the commissioner by
27 regulation.

28 Creditable coverage shall not include coverage consisting solely
29 of the following: coverage only for accident or disability income
30 insurance, or any combination thereof; coverage issued as a
31 supplement to liability insurance; liability insurance, including
32 general liability insurance and automobile liability insurance;
33 workers' compensation or similar insurance; automobile medical
34 payment insurance; credit only insurance; coverage for on-site
35 medical clinics; coverage, as specified in federal regulation, under
36 which benefits for medical care are secondary or incidental to the
37 insurance benefits; and other coverage expressly excluded from the
38 definition of health benefits plan.

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

40 "Dependent" means the spouse, domestic partner as defined in
41 section 3 of P.L.2003, c.246 (C.26:8A-3), civil union partner as
42 defined in section 2 of P.L.2006, c.103 (C.37:1-29), or child of an
43 **[eligible]** employee, subject to applicable terms of the health
44 benefits plan covering the employee.

45 **["Eligible employee"** means a full-time employee who works a
46 normal work week of 25 or more hours. The term includes a sole
47 proprietor, a partner of a partnership, or an independent contractor,
48 if the sole proprietor, partner, or independent contractor is included

1 as an employee under a health benefits plan of a small employer,
2 but does not include employees who work less than 25 hours a
3 week, work on a temporary or substitute basis or are participating in
4 an employee welfare arrangement established pursuant to a
5 collective bargaining agreement.】

6 "Employee" means an individual who is an employee under the
7 common law standard as described in 26 C.F.R 31.3401(c)-1. For
8 purposes of determining whether an employer is a small employer,
9 "employee" excludes an individual and his or her spouse when the
10 business is owned by the individual or by the individual and his or
11 her spouse, a sole proprietor, a partner in a partnership, and a two
12 percent shareholder in a Subchapter S corporation as well as
13 immediate family members of these individuals. The term
14 "employee" also excludes a leased employee.

15 "Enrollment date" means, with respect to a person covered under
16 a health benefits plan, the date of enrollment of the person in the
17 health benefits plan or, if earlier, the first day of the waiting period
18 for such enrollment.

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

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

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

37 "Health benefits plan" means any hospital and medical expense
38 insurance policy or certificate; health, hospital, or medical service
39 corporation contract or certificate; or health maintenance
40 organization subscriber contract or certificate delivered or issued
41 for delivery in this State by any carrier to a small employer group
42 pursuant to section 3 of P.L.1992, c.162 (C.17B:27A-19). For
43 purposes of this act, "health benefits plan" shall not include one or
44 more, or any combination of, the following: coverage only for
45 accident or disability income insurance, or any combination thereof;
46 coverage issued as a supplement to liability insurance; liability
47 insurance, including general liability insurance and automobile
48 liability insurance; workers' compensation or similar insurance;

1 automobile medical payment insurance; credit-only insurance;
2 coverage for on-site medical clinics; and other similar insurance
3 coverage, as specified in federal regulations, under which benefits
4 for medical care are secondary or incidental to other insurance
5 benefits. Health benefits plan shall not include the following
6 benefits if they are provided under a separate policy, certificate or
7 contract of insurance or are otherwise not an integral part of the
8 plan: limited scope dental or vision benefits; benefits for long-term
9 care, nursing home care, home health care, community-based care,
10 or any combination thereof; and such other similar, limited benefits
11 as are specified in federal regulations. Health benefits plan shall
12 not include hospital confinement indemnity coverage if the benefits
13 are provided under a separate policy, certificate or contract of
14 insurance, there is no coordination between the provision of the
15 benefits and any exclusion of benefits under any group health
16 benefits plan maintained by the same plan sponsor, and those
17 benefits are paid with respect to an event without regard to whether
18 benefits are provided with respect to such an event under any group
19 health plan maintained by the same plan sponsor. Health benefits
20 plan shall not include the following if it is offered as a separate
21 policy, certificate or contract of insurance: Medicare supplemental
22 health insurance as defined under section 1882(g)(1) of the federal
23 Social Security Act (42 U.S.C. s.1395ss(g)(1)); and coverage
24 supplemental to the coverage provided under chapter 55 of Title 10,
25 United States Code (10 U.S.C. s.1071 et seq.); and similar
26 supplemental coverage provided to coverage under a group health
27 plan.

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

33 "Late enrollee" means **【an eligible】** a full-time employee or
34 dependent who requests enrollment in a health benefits plan of a
35 small employer following the initial minimum 30-day enrollment
36 period provided under the terms of the health benefits plan. **【An**
37 eligible employee or dependent shall not be considered a late
38 enrollee if the individual: a. was covered under another employer's
39 health benefits plan at the time he was eligible to enroll and stated
40 at the time of the initial enrollment that coverage under that other
41 employer's health benefits plan was the reason for declining
42 enrollment, but only if the plan sponsor or carrier required such a
43 statement at that time and provided the employee with notice of that
44 requirement and the consequences of that requirement at that time;
45 b. has lost coverage under that other employer's health benefits plan
46 as a result of termination of employment or eligibility, reduction in
47 the number of hours of employment, involuntary termination, the
48 termination of the other plan's coverage, death of a spouse, or

1 divorce or legal separation; and c. requests enrollment within 90
2 days after termination of coverage provided under another
3 employer's health benefits plan. An eligible employee or dependent
4 also shall not be considered a late enrollee if the individual is
5 employed by an employer which offers multiple health benefits
6 plans and the individual elects a different plan during an open
7 enrollment period; the individual had coverage under a COBRA
8 continuation provision and the coverage under that provision was
9 exhausted and the employee requests enrollment not later than 30
10 days after the date of exhaustion of COBRA coverage; or if a court
11 of competent jurisdiction has ordered coverage to be provided for a
12 spouse or minor child under a covered employee's health benefits
13 plan and request for enrollment is made within 30 days after
14 issuance of that court order.】

15 "Medical care" means amounts paid: (1) for the diagnosis, care,
16 mitigation, treatment, or prevention of disease, or for the purpose of
17 affecting any structure or function of the body; and (2)
18 transportation primarily for and essential to medical care referred to
19 in (1) above.

20 "Member" means all carriers issuing health benefits plans in this
21 State on or after the effective date of this act.

22 "Multiple employer arrangement" means an arrangement
23 established or maintained to provide health benefits to employees
24 and their dependents of two or more employers, under an insured
25 plan purchased from a carrier in which the carrier assumes all or a
26 substantial portion of the risk, as determined by the commissioner,
27 and shall include, but is not limited to, a multiple employer welfare
28 arrangement, or MEWA, multiple employer trust or other form of
29 benefit trust.

30 "Plan of operation" means the plan of operation of the program
31 including articles, bylaws and operating rules approved pursuant to
32 section 14 of P.L.1992, c.162 (C.17B:27A-30).

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

36 "Preexisting condition exclusion" means, with respect to
37 coverage, a limitation or exclusion of benefits relating to a
38 condition based on the fact that the condition was present before the
39 date of enrollment for that coverage, whether or not any medical
40 advice, diagnosis, care, or treatment was recommended or received
41 before that date. Genetic information shall not be treated as a
42 preexisting condition in the absence of a diagnosis of the condition
43 related to that information.

44 "Program" means the New Jersey Small Employer Health
45 Benefits Program established pursuant to section 12 of P.L.1992,
46 c.162 (C.17B:27A-28).

47 "Small employer" means, in connection with a group health plan
48 with respect to a calendar year and a plan year, 【any person, firm,

1 corporation, partnership, or political subdivision that is actively
2 engaged in business that **an employer with a business location in**
3 **the State of New Jersey who** employed an average of at least **[two]**
4 **one** but not more than 50 **[eligible]** employees on business days
5 during the preceding calendar year; and who employs at least **[two]**
6 **employees** **one employee** on the first day of the plan year**],** and the
7 majority of the employees are employed in New Jersey. All
8 persons**].** Any person treated as a single employer under subsection
9 (b), (c), (m) or (o) of section 414 of the Internal Revenue Code of
10 1986 (26 U.S.C. s.414) shall be treated as one employer.
11 **[Subsequent to the issuance of a health benefits plan to a small**
12 **employer and for the purpose of determining continued eligibility,**
13 **the size of a small employer shall be determined annually. Except**
14 **as otherwise specifically provided, provisions of P.L.1992, c.162**
15 **(C.17B:27A-17 et seq.) that apply to a small employer shall**
16 **continue to apply at least until the plan anniversary following the**
17 **date the small employer no longer meets the requirements of this**
18 **definition. In the case of an employer that was not in existence**
19 **during the preceding calendar year, the determination of whether**
20 **the employer is a small or large employer shall be based on the**
21 **average number of employees that it is reasonably expected that the**
22 **employer will employ on business days in the current calendar year.**
23 **Any reference in P.L.1992, c.162 (C.17B:27A-17 et seq.) to an**
24 **employer shall include a reference to any predecessor of such**
25 **employer.]** Additionally, small employer includes an employer that
26 employs more than 50 full-time employees if the employer's
27 workforce exceeds 50 full-time employees for no more than 120
28 days during the calendar year and the employees in excess of 50
29 who were employed during such 120-day or fewer period were
30 seasonal workers. As used in the definition of small employer,
31 “full-time” means an employee works 30 or more hours per week.

32 "Small employer carrier" means any carrier that offers health
33 benefits plans covering **[eligible]** employees of one or more small
34 employers.

35 "Small employer health benefits plan" means a health benefits
36 plan for small employers approved by the commissioner pursuant to
37 section 17 of P.L.1992, c.162 (C.17B:27A-33).

38 "Stop loss" or "excess risk insurance" means an insurance policy
39 designed to reimburse a self-funded arrangement of one or more
40 small employers for catastrophic, excess or unexpected expenses,
41 wherein neither the employees nor other individuals are third party
42 beneficiaries under the insurance policy. In order to be considered
43 stop loss or excess risk insurance for the purposes of P.L.1992,
44 c.162 (C.17B:27A-17 et seq.), the policy shall establish a per person
45 attachment point or retention or aggregate attachment point or
46 retention, or both, which meet the following requirements:

1 a. If the policy establishes a per person attachment point or
2 retention, that specific attachment point or retention shall not be
3 less than \$20,000 per covered person per plan year; and

4 b. If the policy establishes an aggregate attachment point or
5 retention, that aggregate attachment point or retention shall not be
6 less than 125% of expected claims per plan year.

7 "Supplemental limited benefit insurance" means insurance that is
8 provided in addition to a health benefits plan on an indemnity non-
9 expense incurred basis.

10 (cf: P.L. 2009, c.293, s.2)

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12 2. This act shall take effect immediately.

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STATEMENT

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18 This bill revises the statutory definition of "small employer"
19 under the New Jersey Small Employer Health Benefits Program to
20 conform to the definitions under the federal "Affordable Care Act,"
21 or ACA. Although the Department of Banking and Insurance
22 (DOBI) updated the regulations for the program to align them with
23 the ACA definition, the New Jersey statute remains outdated and
24 does not conform to the ACA definition.

25 The ACA defines the small-group market to include employers
26 with between two and 100 employees. Starting in 2014, the ACA
27 offered states the option of increasing the maximum size threshold
28 in the small-group market to 100 employees, but it required them to
29 do so by 2016. New Jersey did not opt to expand the size of the
30 small group market, and currently defines small groups as those of
31 up to 50 employees.

32 The federal law, through the definition of "employee," also
33 provides that sole proprietors, partnerships, or husband-wife,
34 parent-child businesses cannot purchase in the small group market,
35 unless they have at least one other employee. New Jersey program
36 regulations have been modified to conform the definition of
37 "employee" in the small employer market to the ACA, but the
38 definition in the New Jersey statute has not been updated.
39 Accordingly, this bill revises the definition of "employee" to ensure
40 that the definition in New Jersey would remain the same as
41 currently provided in the ACA, even if the ACA were to be
42 repealed.