

ASSEMBLY, No. 392

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman EDWARD H. THOMSON

District 30 (Monmouth and Ocean)

Co-Sponsored by:

Assemblymen Wirths, Space, Clifton, Auth and Rooney

SYNOPSIS

Allows certain sole proprietors to join a small employer health benefits purchasing alliance.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning certain health benefits purchasing alliances,
2 and amending P.L.2001, c.225 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.2001, c.225 (C.17B:27A-25.1) is amended
8 to read as follows:

9 1. The Legislature finds and declares that:

10 a. Small employers, that is, employers that employ between
11 **【two】** one and 50 employees and sole proprietors, have traditionally
12 been at an economic disadvantage with respect to the purchase and
13 provision of health benefits for their employees and themselves
14 because certain administrative and premium rate savings that are
15 available to larger employers are not available to them by virtue of
16 their size;

17 b. Providing for the establishment of purchasing alliances
18 comprised of groups of small employers and sole proprietors would
19 enable **【small employers】** them to take advantage of the economies
20 of scale in the delivery of health benefits currently available to large
21 employer groups; and

22 c. Working within the framework of the Small Employer
23 Health Benefits Program established by P.L.1992, c.162
24 (C.17B:27A-17 et seq.), small employer purchasing alliances, with
25 the voluntary participation of insurance carriers, would have access
26 to the standard health benefits plans developed under that law at a
27 reduced premium, along with the protections afforded under that
28 law, including: guaranteed access to health benefits coverage for
29 **【their】** small employers, including sole proprietors, and any
30 employees of those small employers; guaranteed renewability of
31 health plans regardless of **【the】** their health status **【of employees or**
32 **their dependents】**; and prohibitions against the use of certain rating
33 factors such as health status, prior claims history or occupation.
34 (cf: P.L.2001, c.225, s.1.)

35

36 2. Section 2 of P.L.2001, c.225 (C.17B:27A-25.2) is amended
37 to read as follows:

38 2. As used in this act:

39 "Board" means a small employer purchasing alliance board of
40 directors provided for in section 4 of this act.

41 "Carrier" means a small employer carrier as defined in section 1
42 of P.L.1992, c.162 (C.17B:27A-17).

43 "Commissioner" means the Commissioner of Banking and
44 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.

1 "Dependent" means the same as defined in section 1 of P.L.1992,
2 c.162 (C.17B:27A-17). For the purposes of P.L.2001, c.225
3 (C.17B:27A-25.1 et seq.), "dependent" also means the spouse,
4 domestic partner as defined in section 3 of P.L.2003, c.246
5 (C.26:8A-3), civil union partner as defined in section 2 of P.L.2006,
6 c.103 (C.37:1-29), or child of a sole proprietor.

7 "Eligible employee" means the same as defined in section 1 of
8 P.L.1992, c.162 (C.17B:27A-17).

9 "Eligible group of small employers" means a group of small
10 employers or sole proprietors, or both, which: (1) are engaged in the
11 same or similar type of trade or business; or (2) are members of a
12 common trade association, professional association, chamber of
13 commerce or other association; or (3) are located in a common
14 geographic area.

15 "Health benefits plan" means a small employer health benefits
16 plan approved by the commissioner pursuant to section 17 of
17 P.L.1992, c.162 (C.17B:27A-33).

18 "Health status-related factor" means the same as defined in
19 section 1 of P.L.1992, c.162 (C.17B:27A-17).

20 "Member" means a small employer or sole proprietor who is a
21 member of a purchasing alliance as provided for in section 3 of this
22 act.

23 "Small Employer Purchasing Alliance," "purchasing alliance" or
24 "alliance" means a small employer purchasing alliance as
25 established pursuant to section 3 of this act.

26 "Small employer" means the same as defined in section 1 of
27 P.L.1992, c.162 (C.17B:27A-17). For the purposes of P.L. 2001,
28 c. 225 (C. 17B:27A-25.1 et seq.), "small employer" also means and
29 includes a sole proprietor.

30 "Sole proprietor" means an individual, who owns a business
31 located in New Jersey with no employees, and who works at that
32 business location in New Jersey.

33 (cf: P.L.2001, c.225, s.2)

34

35 3. Section 3 of P.L.2001, c.225 (C.17B:27A-25.3) is amended
36 to read as follows:

37 3. Any eligible group of small employers may join together, by
38 means of a joint contract under the procedures established by this
39 act, to form a "Small Employer Purchasing Alliance" for the
40 purpose of negotiating a reduced premium for its members
41 purchasing a small employer health benefits plan or plans for their
42 eligible employees and the employees' dependents, and any sole
43 proprietors and their dependents. The joint contract shall be
44 executed by all members of the purchasing alliance.

45 (cf: P.L.2001, c.225, s.3)

1 4. Section 7 of P.L.2001, c.225 (C.17B:27A-25.7) is amended
2 to read as follows:

3 7. A purchasing alliance established pursuant to the provisions
4 of this act shall not:

5 a. Purchase health care services, assume risk for the cost or
6 provision of health care services or otherwise contract with health
7 care providers for the provision of health care services to members,
8 eligible employees or their dependents;

9 b. Exclude a small employer, eligible employee or dependent
10 from membership in the purchasing alliance who agrees to pay fees
11 for membership and the premium for health benefits coverage and
12 who abides by the by-laws and rules of the purchasing alliance;

13 c. Engage in any act or practice that results in the selection of
14 member small employers or eligible employees based on any health
15 status-related factor; or

16 d. Engage in any trade practice or activity prohibited pursuant
17 to chapter 30 of Title 17B of the New Jersey Statutes.

18 (cf: P.L.2001, c.225, s.7)

19

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

22 1. As used in this act:

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

31 "Anticipated loss ratio" means the ratio of the present value of
32 the expected benefits, not including dividends, to the present value
33 of the expected premiums, not reduced by dividends, over the entire
34 period for which rates are computed to provide coverage. For
35 purposes of this ratio, the present values must incorporate realistic
36 rates of interest which are determined before federal taxes but after
37 investment expenses.

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

39 "Carrier" means any entity subject to the insurance laws and
40 regulations of this State, or subject to the jurisdiction of the
41 commissioner, that contracts or offers to contract to provide,
42 deliver, arrange for, pay for, or reimburse any of the costs of health
43 care services, including an insurance company authorized to issue
44 health insurance, a health maintenance organization, a hospital
45 service corporation, medical service corporation and health service
46 corporation, or any other entity providing a plan of health
47 insurance, health benefits or health services. The term "carrier"
48 shall not include a joint insurance fund established pursuant to State

1 law. For purposes of this act, carriers that are affiliated companies
2 shall be treated as one carrier, except that any insurance company,
3 health service corporation, hospital service corporation, or medical
4 service corporation that is an affiliate of a health maintenance
5 organization located in New Jersey or any health maintenance
6 organization located in New Jersey that is affiliated with an
7 insurance company, health service corporation, hospital service
8 corporation, or medical service corporation shall treat the health
9 maintenance organization as a separate carrier.

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

13 "Commissioner" means the Commissioner of Banking and
14 Insurance.

15 "Community rating" or "community rated" means a rating
16 methodology in which the premium charged by a carrier for all
17 persons covered by a policy or contract form is the same based upon
18 the experience of the entire pool of risks covered by that policy or
19 contract form without regard to age, gender, health status, residence
20 or occupation.

21 "Creditable coverage" means, with respect to an individual,
22 coverage of the individual under any of the following: a group
23 health plan; a group or individual health benefits plan; Part A or
24 part B of Title XVIII of the federal Social Security Act (42 U.S.C.
25 s.1395 et seq.); Title XIX of the federal Social Security Act (42
26 U.S.C. s.1396 et seq.), other than coverage consisting solely of
27 benefits under section 1928 of Title XIX of the federal Social
28 Security Act (42 U.S.C.s.1396s); chapter 55 of Title 10, United
29 States Code (10 U.S.C. s.1071 et seq.); a medical care program of
30 the Indian Health Service or of a tribal organization; a state health
31 benefits risk pool; a health plan offered under chapter 89 of Title 5,
32 United States Code (5 U.S.C. s.8901 et seq.); a public health plan as
33 defined by federal regulation; a health benefits plan under section
34 5(e) of the "Peace Corps Act" (22 U.S.C. s.2504(e)); or coverage
35 under any other type of plan as set forth by the commissioner by
36 regulation.

37 Creditable coverage shall not include coverage consisting solely
38 of the following: coverage only for accident or disability income
39 insurance, or any combination thereof; coverage issued as a
40 supplement to liability insurance; liability insurance, including
41 general liability insurance and automobile liability insurance;
42 workers' compensation or similar insurance; automobile medical
43 payment insurance; credit only insurance; coverage for on-site
44 medical clinics; coverage, as specified in federal regulation, under
45 which benefits for medical care are secondary or incidental to the
46 insurance benefits; and other coverage expressly excluded from the
47 definition of health benefits plan.

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

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

7 "Eligible employee" means a full-time employee who works a
8 normal work week of 25 or more hours. The term includes a sole
9 proprietor, a partner of a partnership, or an independent contractor,
10 if the sole proprietor, partner, or independent contractor is included
11 as an employee under a health benefits plan of a small employer,
12 but does not include employees who work less than 25 hours a
13 week, work on a temporary or substitute basis or are participating in
14 an employee welfare arrangement established pursuant to a
15 collective bargaining agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 "Small employer carrier" means any carrier that offers health
27 benefits plans covering eligible employees of one or more small
28 employers.

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

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

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

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

1 "Supplemental limited benefit insurance" means insurance that is
2 provided in addition to a health benefits plan on an indemnity non-
3 expense incurred basis.
4 (cf: P.L.2009, c.293, s.2)

5
6 6. This act shall take effect on the 90th day next following
7 enactment.

8
9
10 STATEMENT

11
12 This bill permits small employer purchasing alliances to offer
13 small employer health benefits plans to certain sole proprietors who
14 share certain common factors with other small employers in the
15 alliance. As authorized by New Jersey's purchasing alliance law, a
16 small employer purchasing alliance is a group of small employers
17 which join together, by means of a joint contract, for the purpose of
18 negotiating a reduced premium for its members purchasing a small
19 employer health benefits plan or plans for their eligible employees
20 and the employees' dependents. Currently under the law, sole
21 proprietors with no employees are not, by definition, permitted to
22 join such an alliance and are only eligible to purchase a health
23 benefits plan in the individual market pursuant to the New Jersey
24 Individual Health Coverage Program.

25 Specifically, the bill amends the definition of "eligible group of
26 small employers" in the purchasing alliance law to include sole
27 proprietors who own a business located in New Jersey having no
28 employees and who work at that business location in New Jersey.
29 A sole proprietor must also be: engaged in the same or similar type
30 of trade or business; a member of a common trade association,
31 professional association, chamber of commerce or other association;
32 or located in a common geographic area with the other members of
33 the purchasing alliance. The bill also amends the definition of
34 "small employer" with respect to the New Jersey Small Employer
35 Health Benefits Program, to include businesses that employ one
36 employee, instead of the current definition that requires at least two
37 employees in order for a business to qualify as a small employer
38 that is eligible to purchase health insurance through the program.

39 Accordingly, this bill allows sole proprietors to join a small
40 employer purchasing alliance to take advantage of the economies of
41 scale in the delivery of health benefits and administrative and
42 premium rate savings that are available to larger employers but
43 which would otherwise not be available to small employers or sole
44 proprietors, by virtue of their size.