

AN ACT concerning certain health benefits purchasing alliances,
and amending P.L. 2001, c. 225 and P.L. 1992, c. 162.

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

1. Section 1 of P.L. 2001, c. 225 (C. 17B:27A-25.1) is amended
to read as follows:

1. The Legislature finds and declares that:

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

b. Providing for the establishment of purchasing alliances
comprised of groups of small employers and sole proprietors would
enable [small employers] them to take advantage of the economies
of scale in the delivery of health benefits currently available to large
employer groups; and

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

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

2. As used in this act:

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

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

"Commissioner" means the Commissioner of Banking and
Insurance.

"Dependent" means the same as defined in section 1 of P.L.1992,
c.162 (C.17B:27A-17). For the purposes of P.L. 2001, c. 225 (C.

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.

D

R

A

F

T

17B:27A-25.1 et seq., “dependent” also means the spouse or child of a sole proprietor.

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

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

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

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

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

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

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

“Sole proprietor” means an individual, who owns a business located in New Jersey with no employees, and who works at that business location in New Jersey.

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

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

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

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

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

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

a. Purchase health care services, assume risk for the cost or provision of health care services or otherwise contract with health

D

R

A

F

T

care providers for the provision of health care services to members, eligible employees or their dependents;

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

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

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

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

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

1. As used in this act:

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

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

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

"Carrier" means any entity subject to the insurance laws and regulations of this State, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurance company authorized to issue health insurance, a health maintenance organization, a hospital service corporation, medical service corporation and health service corporation, or any other entity providing a plan of health insurance, health benefits or health services. The term "carrier" shall not include a joint insurance fund established pursuant to State law. For purposes of this act, carriers that are affiliated companies shall be treated as one carrier, except that any insurance company, health service corporation, hospital service corporation, or medical service corporation that is an affiliate of a health maintenance organization located in New Jersey or any health maintenance organization located in New Jersey that is affiliated with an insurance company, health service corporation, hospital service

D

R

A

F

T

corporation, or medical service corporation shall treat the health maintenance organization as a separate carrier.

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

"Commissioner" means the Commissioner of Banking and Insurance.

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

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

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

"Department" means the Department of Banking and Insurance.

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

"Eligible employee" means a full-time employee who works a normal work week of 25 or more hours. The term includes a sole proprietor, a partner of a partnership, or an independent contractor,

D

R

A

F

T

if the sole proprietor, partner, or independent contractor is included as an employee under a health benefits plan of a small employer, but does not include employees who work less than 25 hours a week, work on a temporary or substitute basis or are participating in an employee welfare arrangement established pursuant to a collective bargaining agreement.

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

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

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

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

"Health benefits plan" means any hospital and medical expense insurance policy or certificate; health, hospital, or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in this State by any carrier to a small employer group pursuant to section 3 of P.L.1992, c.162 (C.17B:27A-19). For purposes of this act, "health benefits plan" shall not include one or more, or any combination of, the following: coverage only for accident or disability income insurance, or any combination thereof; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability insurance; workers' compensation or similar insurance; automobile medical payment insurance; credit-only insurance; coverage for on-site medical clinics; and other similar insurance coverage, as specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits. Health benefits plan shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan: limited scope dental or vision benefits; benefits for long-term care, nursing home care, home health care, community-based care,

D

R

A

F

T

or any combination thereof; and such other similar, limited benefits as are specified in federal regulations. Health benefits plan shall not include hospital confinement indemnity coverage if the benefits are provided under a separate policy, certificate or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health benefits plan maintained by the same plan sponsor, and those benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor. Health benefits plan shall not include the following if it is offered as a separate policy, certificate or contract of insurance: Medicare supplemental health insurance as defined under section 1882(g)(1) of the federal Social Security Act (42 U.S.C.s.1395ss(g)(1)); and coverage supplemental to the coverage provided under chapter 55 of Title 10, United States Code (10 U.S.C. s.1071 et seq.); and similar supplemental coverage provided to coverage under a group health plan.

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

"Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefits plan of a small employer following the initial minimum 30-day enrollment period provided under the terms of the health benefits plan. An eligible employee or dependent shall not be considered a late enrollee if the individual: a. was covered under another employer's health benefits plan at the time he was eligible to enroll and stated at the time of the initial enrollment that coverage under that other employer's health benefits plan was the reason for declining enrollment, but only if the plan sponsor or carrier required such a statement at that time and provided the employee with notice of that requirement and the consequences of that requirement at that time; b. has lost coverage under that other employer's health benefits plan as a result of termination of employment or eligibility, reduction in the number of hours of employment, involuntary termination, the termination of the other plan's coverage, death of a spouse, or divorce or legal separation; and c. requests enrollment within 90 days after termination of coverage provided under another employer's health benefits plan. An eligible employee or dependent also shall not be considered a late enrollee if the individual is employed by an employer which offers multiple health benefits plans and the individual elects a different plan during an open enrollment period; the individual had coverage under a COBRA continuation provision and the coverage under that provision was exhausted and the employee requests enrollment not later than 30 days after the date of exhaustion of COBRA coverage; or if a court of competent

D

R

A

F

T

jurisdiction has ordered coverage to be provided for a spouse or minor child under a covered employee's health benefits plan and request for enrollment is made within 30 days after issuance of that court order.

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

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

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

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

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

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

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

"Small employer" means, in connection with a group health plan with respect to a calendar year and a plan year, any person, firm, corporation, partnership, or political subdivision that is actively engaged in business that employed an average of at least ~~two~~ one but not more than 50 eligible employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year, and the majority of the employees are employed in New Jersey. All persons treated as a single employer under subsection (b), (c), (m) or (o) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C.s.414) shall be treated as one employer. Subsequent to the issuance of a health benefits plan to a small employer and for the purpose of determining continued eligibility, the size of a small employer shall

D

R

A

F

T

be determined annually. Except as otherwise specifically provided, provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.) that apply to a small employer shall continue to apply at least until the plan anniversary following the date the small employer no longer meets the requirements of this definition. In the case of an employer that was not in existence during the preceding calendar year, the determination of whether the employer is a small or large employer shall be based on the average number of employees that it is reasonably expected that the employer will employ on business days in the current calendar year. Any reference in P.L.1992, c.162 (C.17B:27A-17 et seq.) to an employer shall include a reference to any predecessor of such employer.

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

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

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

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

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

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

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

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

STATEMENT

This bill permits small employer purchasing alliances to offer small employer health benefits plans to certain sole proprietors who share certain common factors with other small employers in the alliance. As authorized by New Jersey's purchasing alliance law, a small employer purchasing alliance is a group of small employers which join together, by means of a joint contract, for the purpose of

D

R

A

F

T

negotiating a reduced premium for its members purchasing a small employer health benefits plan or plans for their eligible employees and the employees' dependents. Currently under the law, sole proprietors with no employees are not, by definition, permitted to join such an alliance and are only eligible to purchase a health benefits plan in the individual market pursuant to the New Jersey Individual Health Coverage Program.

Specifically, the bill amends the definition of “eligible group of small employers” in the purchasing alliance law to include sole proprietors who own a business located in New Jersey having no employees and who work at that business location in New Jersey. A sole proprietor must also be: engaged in the same or similar type of trade or business; a member of a common trade association, professional association, chamber of commerce or other association; or located in a common geographic area with the other members of the purchasing alliance.

The bill also amends the definition of “small employer” with respect to the New Jersey Small Employer Health Benefits Program, to include businesses that employ one employee, instead of the current definition that requires at least two employees in order for a business to qualify as a small employer that is eligible to purchase health insurance through the program.

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

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

D

R

A

F

T