

ASSEMBLY, No. 4357

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JUNE 20, 2022

Sponsored by:

Assemblyman KEVIN J. ROONEY
District 40 (Bergen, Essex, Morris and Passaic)

Co-Sponsored by:

Assemblywoman McCarthy Patrick, Assemblyman Space,
Assemblywomen Eulner and Piperno

SYNOPSIS

Permits inclusion of volunteer firefighters and other emergency responders within municipal eligible employee group for purposes of the small employer health benefits plan statutes.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/15/2022)

1 AN ACT concerning eligibility for participation in small employer
2 health benefits plans and amending 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.162 (C.17B:27A-17) is amended to
8 read as follows:

9 1. As used in this act:

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

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

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

26 "Carrier" means any entity subject to the insurance laws and
27 regulations of this State, or subject to the jurisdiction of the
28 commissioner, that contracts or offers to contract to provide,
29 deliver, arrange for, pay for, or reimburse any of the costs of health
30 care services, including an insurance company authorized to issue
31 health insurance, a health maintenance organization, a hospital
32 service corporation, medical service corporation and health service
33 corporation, or any other entity providing a plan of health
34 insurance, health benefits or health services. The term "carrier"
35 shall not include a joint insurance fund established pursuant to State
36 law. For purposes of this act, carriers that are affiliated companies
37 shall be treated as one carrier, except that any insurance company,
38 health service corporation, hospital service corporation, or medical
39 service corporation that is an affiliate of a health maintenance
40 organization located in New Jersey or any health maintenance
41 organization located in New Jersey that is affiliated with an
42 insurance company, health service corporation, hospital service
43 corporation, or medical service corporation shall treat the health
44 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 benefits
44 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. For the purposes of P.L.1992,
6 c.162, "eligible employee" shall also mean members of a volunteer
7 fire company or an incorporated volunteer first aid, emergency,
8 rescue, or ambulance squad rendering service generally throughout
9 the municipality who are eligible to receive any of the benefits
10 under N.J.S.40A:10-26 through N.J.S.40A:10-32.

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

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

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

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

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

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

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

29 "Late enrollee" means an eligible employee or dependent who
30 requests enrollment in a health benefits plan of a small employer
31 following the initial minimum 30-day enrollment period provided
32 under the terms of the health benefits plan. An eligible employee or
33 dependent shall not be considered a late enrollee if the individual: a.
34 was covered under another employer's health benefits plan at the
35 time he was eligible to enroll and stated at the time of the initial
36 enrollment that coverage under that other employer's health benefits
37 plan was the reason for declining enrollment, but only if the plan
38 sponsor or carrier required such a statement at that time and
39 provided the employee with notice of that requirement and the
40 consequences of that requirement at that time; b. has lost coverage
41 under that other employer's health benefits plan as a result of
42 termination of employment or eligibility, reduction in the number of
43 hours of employment, involuntary termination, the termination of
44 the other plan's coverage, death of a spouse, or divorce or legal
45 separation; and c. requests enrollment within 90 days after
46 termination of coverage provided under another employer's health
47 benefits plan. An eligible employee or dependent also shall not be
48 considered a late enrollee if the individual is employed by an

1 employer which offers multiple health benefits plans and the
2 individual elects a different plan during an open enrollment period;
3 the individual had coverage under a COBRA continuation provision
4 and the coverage under that provision was exhausted and the
5 employee requests enrollment not later than 30 days after the date
6 of exhaustion of COBRA coverage; or if a court of competent
7 jurisdiction has ordered coverage to be provided for a spouse or
8 minor child under a covered employee's health benefits plan and
9 request for enrollment is made within 30 days after issuance of that
10 court order.

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

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

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

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

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

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

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

43 "Small employer" means, in connection with a group health plan
44 with respect to a calendar year and a plan year, any person, firm,
45 corporation, partnership, or political subdivision that is actively
46 engaged in business that employed an average of at least two but
47 not more than 50 eligible employees on business days during the
48 preceding calendar year and who employs at least two employees

1 on the first day of the plan year, and the majority of the employees
2 are employed in New Jersey. All persons treated as a single
3 employer under subsection (b), (c), (m) or (o) of section 414 of the
4 Internal Revenue Code of 1986 (26 U.S.C.s.414) shall be treated as
5 one employer. Subsequent to the issuance of a health benefits plan
6 to a small employer and for the purpose of determining continued
7 eligibility, the size of a small employer shall be determined
8 annually. Except as otherwise specifically provided, provisions of
9 P.L.1992, c.162 (C.17B:27A-17 et seq.) that apply to a small
10 employer shall continue to apply at least until the plan anniversary
11 following the date the small employer no longer meets the
12 requirements of this definition. In the case of an employer that was
13 not in existence during the preceding calendar year, the
14 determination of whether the employer is a small or large employer
15 shall be based on the average number of employees that it is
16 reasonably expected that the employer will employ on business
17 days in the current calendar year. Any reference in P.L.1992, c.162
18 (C.17B:27A-17 et seq.) to an employer shall include a reference to
19 any predecessor of such employer. For the purposes of determining
20 the size of an employer, members of a volunteer fire company or an
21 incorporated volunteer first aid, emergency, rescue, or ambulance
22 squad rendering service generally throughout a municipality who
23 are eligible to receive any of the benefits under N.J.S.40A:10-26
24 through N.J.S.40A:10-32 shall not be counted as employees of the
25 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)

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6 2. This act shall take effect immediately.

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STATEMENT

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11 This bill resolves an apparent conflict between provisions in
12 chapter 10 of Title 40A of the New Jersey Statutes, which permit
13 municipalities to offer group health insurance benefits to volunteer fire
14 fighters and emergency responders, and provisions in chapter 27A of
15 Title 17B of the New Jersey Statutes regarding small employer health
16 benefits plans. For example, although N.J.S.40A:10-30 authorizes a
17 municipality to provide group health plans to volunteer firefighters,
18 those volunteers are not considered eligible employees under the small
19 employer health benefits plan statutes. This bill clarifies that these
20 volunteers, as well as emergency responders, may be included in the
21 group of eligible employees in municipalities regarded as small
22 employers, and thereby receive coverage under the same group plan.