

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

STATEMENT TO **ASSEMBLY, No. 5137**

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 9, 2023

The Assembly Financial Institutions and Insurance Committee reports favorably and with committee amendments Assembly Bill No. 5137.

As amended, this bill revises various requirements for individual and small employer health benefits plans.

The bill removes a provision of law that requires health insurance carriers to offer individual health plans, through the Individual Health Coverage Program, as a condition of participation in the small employer health insurance market. The bill requires carriers issuing small employer health benefits plans that also issue individual health benefits plans to make a good faith effort to market individual health benefits plans and makes the violation of that requirement punishable by a fine.

The bill also replaces a mandatory five-year prohibition on carriers re-entering the individual and small employer health insurance markets if the carrier ceases to offer either plan with a provision permitting the Commissioner of Banking and Insurance to impose a five-year prohibition on the issuance of any health benefits plan in the individual or small employer markets if the commissioner determines the prohibition would be beneficial to those markets.

The bill removes provisions of current law that provide certain caps on cost-sharing amounts in small employer health plans. The bill instead provides that cost-sharing may not exceed the maximum out-of-pocket limits established in the federal Patient Protection and Affordable Care Act. This bill also requires the board of directors of the New Jersey Small Employer Health Benefits Program to annually review and adjust certain requirements, including out-of-pocket limits, for small employer health benefits plans. In addition, the bill requires the board to examine and track where small employers who do not continue coverage through a small employer health benefits plan elect to purchase coverage.

The bill permits the Department of Banking and Insurance and the boards of directors of the New Jersey Individual Health Coverage Program and New Jersey Small Employer Health Benefits Program to

issue regulations creating standard plans or plan design requirements with certain minimum standards and requires the department to repeal or update any regulation in conflict with the goals of the bill. Under the bill, inconsistent regulatory provisions are rendered void.

The bill provides that a carrier that offers an individual or small employer health benefits plan that provides benefits for expenses incurred in the purchase of prescription drugs may use a prescription drug formulary to limit or exclude coverage for prescription drugs, provided that the carrier offers at least one plan with an open formulary and the carrier demonstrates to the satisfaction of the board that utilization and medical review panels are in place to allow formulary flexibility when necessary, provided that the carrier may not adopt a protocol, policy, or program that establishes the specific sequence in which prescription drugs for a specified medical condition, and medically appropriate for a particular patient, are required to be administered in order to be covered by a health benefits plan.

Carriers using a prescription drug formulary pursuant to the bill are required to develop a clinically sound and well-communicated exceptions and appeals process. The bill delineates certain requirements for the process and directs the department to collect certain information from carriers for the purposes of conducting an annual evaluation

The bill requires the department to adopt rules and regulations, for plan year 2024, requiring the minimum standards for small employer health benefits plans to be no greater than the minimum standards set forth in the federal Patient Protection and Affordable Care Act, for individual health benefits plans.

The bill revises the membership of the New Jersey Small Employer Health Benefits Program Board. The bill provides that the board will consist of the following members:

- (1) One carrier that sells plans in the small employer market;
- (2) Two carriers that sell plans in the small employer market or the individual market;
- (3) Two representatives of or individuals employed by businesses that purchase in small employer health benefits plans;
- (4) Two individuals who are licensed insurance brokers;
- (5) Two health care provider representatives;
- (6) One individual representing organized labor; and
- (7) One individual representing an association that represents small businesses in the State; and
- (8) Two persons with knowledge or expertise in New Jersey regulated health insurance markets who represents the general public.

In addition, the board is to include the Commission of Health and the Commissioner of Banking and Insurance or the commissioner's designee, as ex officio members.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) remove from the bill a provision modifying the age rating band for small employer health benefits plans;

(2) stipulate that individual and small employer health benefits plans may use a prescription drug formulary only if the carrier offers at least one plan with an open formulary, in addition to the other requirements already enumerated in the bill;

(3) require carriers issuing small employer health benefits plans that also issue individual health benefits plans to make a good faith effort to market individual health benefits plans and make a violation of this provision punishable by fine;

(4) allow the Department of Banking and Insurance and the boards of directors of the New Jersey Individual Health Coverage Program and New Jersey Small Employer Health Benefits Program to issue regulations creating standard plans or plan design requirements with certain minimum standards;

(5) require the Department of Banking and Insurance to repeal or update any regulation in conflict with the goals of the bill, and render inconsistent provisions void;

(6) expand the board of directors of the New Jersey Small Employer Health Benefits Program to 13 members by adding an additional person with knowledge or expertise in the New Jersey regulated health insurance markets representing the general public;

(7) add the Commissioner of Health as an ex officio member of the board of directors of the New Jersey Small Employer Health Benefits Program and permit the existing board to continue until a quorum of members newly appointed pursuant to the provisions of the bill is established;

(8) require carriers using a prescription drug formulary pursuant to the bill to develop a clinically sound and well-communicated exceptions and appeals process; and

(9) permit the Department of Banking and Insurance to issue certain regulations pursuant to the bill without regard to timelines relating to administrative rulemaking required under current law.