

SENATE, No. 331

STATE OF NEW JERSEY

220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

Senators O'Scanlon and Greenstein

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

Introduced Pending Technical Review by Legislative Counsel.



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

18 "Anticipated loss ratio" means the ratio of the present value of the
19 expected benefits, not including dividends, to the present value of the
20 expected premiums, not reduced by dividends, over the entire period
21 for which rates are computed to provide coverage. For purposes of
22 this ratio, the present values must incorporate realistic rates of
23 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, deliver,
29 arrange for, pay for, or reimburse any of the costs of health care
30 services, including an insurance company authorized to issue health
31 insurance, a health maintenance organization, a hospital service
32 corporation, medical service corporation and health service
33 corporation, or any other entity providing a plan of health insurance,
34 health benefits or health services. The term "carrier" shall not
35 include a joint insurance fund established pursuant to State law. For
36 purposes of this act, carriers that are affiliated companies shall be
37 treated as one carrier, except that any insurance company, health
38 service corporation, hospital service corporation, or medical service
39 corporation that is an affiliate of a health maintenance organization
40 located in New Jersey or any health maintenance organization located
41 in New Jersey that is affiliated with an insurance company, health
42 service corporation, hospital service corporation, or medical service
43 corporation shall treat the health maintenance organization as a
44 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 health
14 plan; a group or individual health benefits plan; Part A or part B of
15 Title XVIII of the federal Social Security Act (42 U.S.C. s.1395 et
16 seq.); Title XIX of the federal Social Security Act (42 U.S.C. s.1396
17 et seq.), other than coverage consisting solely of benefits under
18 section 1928 of Title XIX of the federal Social Security Act (42
19 U.S.C.s.1396s); chapter 55 of Title 10, United States Code (10 U.S.C.
20 s.1071 et seq.); a medical care program of the Indian Health Service
21 or of a tribal organization; a state health benefits risk pool; a health
22 plan offered under chapter 89 of Title 5, United States Code (5 U.S.C.
23 s.8901 et seq.); a public health plan as defined by federal regulation;
24 a health benefits plan under section 5(e) of the "Peace Corps Act" (22
25 U.S.C. s.2504(e)); or coverage under any other type of plan as set
26 forth by the commissioner by regulation.

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

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

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

44 "Eligible employee" means a full-time employee who works a
45 normal work week of 25 or more hours. The term includes a sole
46 proprietor, a partner of a partnership, or an independent contractor,
47 if the sole proprietor, partner, or independent contractor is included
48 as an employee under a health benefits plan of a small employer, but

1 does not include employees who work less than 25 hours a week,
2 work on a temporary or substitute basis or are participating in an
3 employee welfare arrangement established pursuant to a collective
4 bargaining agreement. For the purposes of P.L.1992, c.162, "eligible
5 employee" shall also mean members of a volunteer fire company or
6 an incorporated volunteer first aid, emergency, rescue, or ambulance
7 squad rendering service generally throughout the municipality who
8 are eligible to receive any of the benefits under N.J.S.40A:10-26
9 through N.J.S.40A:10-32.

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

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

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

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

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

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

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

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

1 COBRA continuation provision and the coverage under that
2 provision was exhausted and the employee requests enrollment not
3 later than 30 days after the date of exhaustion of COBRA coverage;
4 or if a court of competent jurisdiction has ordered coverage to be
5 provided for a spouse or minor child under a covered employee's
6 health benefits plan and request for enrollment is made within 30
7 days after issuance of that court order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46

47 2. This act shall take effect immediately.

1 STATEMENT

2
3 This bill resolves an apparent conflict between provisions in chapter
4 10 of Title 40A of the New Jersey Statutes, which permit municipalities
5 to offer group health insurance benefits to volunteer fire fighters and
6 emergency responders, and provisions in chapter 27A of Title 17B of
7 the New Jersey Statutes regarding small employer health benefits plans.
8 For example, although N.J.S.40A:10-30 authorizes a municipality to
9 provide group health plans to volunteer firefighters, those volunteers are
10 not considered eligible employees under the small employer health
11 benefits plan statutes. This bill clarifies that these volunteers, as well as
12 emergency responders, may be included in the group of eligible
13 employees in municipalities regarded as small employers, and thereby
14 receive coverage under the same group plan.