

SENATE BILL NO. 3480

(Third Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 3480 (Third Reprint) with my recommendations for reconsideration.

This bill revises various requirements for the Individual Health Coverage ("IHC") Program and the Small Employer Health Benefits ("SEH") Program. The bill eliminates outdated statutory provisions that provide certain limitations on cost-sharing and plan design that have been revised through subsequent rulemaking and the promulgation of standard policy forms by the SEH and IHC Boards. The bill also removes the requirement under current law for carriers offering plans in the SEH Program to also offer plans in the IHC Program, and modifies the mandatory five-year prohibition on doing business in the SEH and IHC markets following market withdrawal. Additionally, the bill revises the membership of the SEH Board, which is responsible for overseeing plan design and the administration of the SEH Program.

While many provisions of the bill are primarily aimed at making health insurance plans more accessible and affordable for small businesses, I am concerned with one provision that would allow carriers to utilize a closed formulary in the IHC Program. A closed formulary is one in which non-formulary drugs (both branded and generic) are not reimbursed by the payer. Current law prohibits the use of closed formularies in the IHC Program, ensuring that patients enrolled in the IHC market have the broadest access possible when filling their prescriptions.

I commend the sponsors of this legislation for their efforts to begin to address the long-term viability of the SEH Program. The SEH market has been losing upwards of 41,000 covered lives per year. In 2005, nearly 1 million small business employees and their

families obtained their health insurance through the SEH Program. By 2020, enrollment had dropped to 295,000. The exodus has been driven mainly by federal law changes and increased premiums, which increased by an average rate of 10.4 percent for plan year 2022.

While I am supportive of most of the changes that this bill seeks to implement, including allowing limited plans in the SEH Program to utilize a closed formulary, the bill's authorization of closed formularies in the IHC Program is unwarranted. While the SEH Program has been seeing a decrease in covered lives, the IHC Program, bolstered by the State-based exchange, Get Covered New Jersey, has thrived. More than 341,000 New Jerseyans signed up for health coverage through Get Covered New Jersey during the 2023 Open Enrollment Period - a record high in New Jersey. There has been a nearly 40 percent increase in enrollment since my Administration assumed operation of the health insurance exchange from the federal government in 2019. The unprecedented number of signups follows policy actions taken in partnership with the Legislature to significantly increase and expand financial help to boost affordability of quality, comprehensive health insurance.

The current struggles of the SEH Program are simply not applicable to the IHC Program and, in comparing the two markets, there is no justification to authorize the use of closed formularies in the IHC Program, which would serve no discernible benefit to consumers. In the insurance marketplace, SEH plans compete with self-funded plans for business, while IHC plans do not. The SEH market is the only insurance market in which a small employer is guaranteed the right to purchase insurance regardless of its risk profile. Federal and State laws concerning insurance premium restrictions, guaranteed issue, and renewability do not apply to self-funded policies. Because of the breadth of coverage and consumer protections offered in the SEH market, along with the deterioration of the risk pool, the cost of SEH Program plans tends

to be higher than their self-funded counterparts. Closed formularies are a standard plan design element in the self-funded commercial market and other small employer markets throughout the country. Allowing a closed formulary option in the SEH market would improve the competitiveness of the SEH plans and potentially make SEH plans more attractive for the State's small employers. These same considerations are simply not present in the IHC market.

I am optimistic that the enactment of this bill with my recommended changes will begin to bolster the SEH Program. If the changes set forth in this bill are successful at increasing participation in the SEH market, especially among lower-risk populations, we should see a reduction in premiums and increased affordability of SEH plans. I am confident that the goals of this legislation can be achieved without removing the long-standing protection of an open formulary that New Jersey has offered all persons covered under individual plans.

Therefore, I herewith return Senate Bill No. 3480 (Third Reprint) and recommend that it be amended as follows:

<u>Page 19, Section 7, Line 31:</u>	Delete "12" and insert "11"
<u>Page 20, Section 9, Lines 25-47:</u>	Delete in their entirety
<u>Page 21, Section 9, Lines 1-10:</u>	Delete in their entirety
<u>Page 21, Section 10, Line 12:</u>	Delete "10." and insert "9."
<u>Page 22, Section 11, Line 25:</u>	Delete "11." and insert "10."
<u>Page 22, Section 11, Line 26:</u>	Delete "sections" and insert "section"
<u>Page 22, Section 11, Line 26:</u>	Delete "and 10"
<u>Page 23, Section 12, Line 5:</u>	Delete "12." and insert "11."
<u>Page 23, Section 12, Line 23:</u>	Delete "P.L. , c. (C.) (pending before the Legislature as this act)" and insert "P.L.1992, c.162 (C.17B:27A-20)"
<u>Page 23, Section 13, Line 27:</u>	Delete "13." and insert "12."

[seal]

Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor