

[Second Reprint]
SENATE, No. 3270

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED FEBRUARY 14, 2019

Sponsored by:
Senator NELLIE POU
District 35 (Bergen and Passaic)

Co-Sponsored by:
Senator Scutari

SYNOPSIS

Establishes certain requirements for stop loss insurance offered to small employers.

CURRENT VERSION OF TEXT

As amended by the Senate on December 16, 2019.



(Sponsorship Updated As Of: 3/5/2019)

1 AN ACT concerning stop loss insurance offered by insurers to small
2 employers and amending ²and supplementing² 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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCM committee amendments adopted March 4, 2019.

²Senate floor amendments adopted December 16, 2019.

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
16 (42 U.S.C. s.1395 et seq.); Title XIX of the federal Social Security
17 Act (42 U.S.C. s.1396 et seq.), other than coverage consisting solely
18 of 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.

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

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

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

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

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

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

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

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

1 of exhaustion of COBRA coverage; or if a court of competent
2 jurisdiction has ordered coverage to be provided for a spouse or
3 minor child under a covered employee's health benefits plan and
4 request for enrollment is made within 30 days after issuance of that
5 court order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 ²"Stop loss insurer" means a carrier or any other insurer that is
37 subject to the insurance laws of New Jersey or any other state that
38 offers, issues, or renews any stop loss insurance policy of any kind
39 to a small employer in this State.²

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

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

44

45 ²**【**2. Section 2 of P.L.1992, c.162 (C.17B:27A-18) is amended
46 to read as follows:

1 2. a. Every health insurer, health service corporation, medical
2 service corporation, hospital service corporation, and health
3 maintenance organization licensed or authorized to provide health
4 benefits or services in this State which offers health insurance
5 policies or coverages to small employers shall be subject to the
6 provisions of **【this act】** P.L.1992, c.162 (C.17B:27A-17 et seq.).

7 b. Carriers shall offer coverage to all eligible employees of
8 small employers and their dependents and shall not exclude any
9 employee or eligible dependent on the basis of a health status-
10 related factor.

11 c. Notwithstanding any other law to the contrary, a carrier and
12 any other insurer that is subject to the insurance laws of New Jersey
13 or any other state, shall not offer, issue, or renew any stop loss
14 insurance policy of any kind to small employers on or after the
15 effective date of P.L. c. (pending before the Legislature as this
16 bill). ¹This subsection shall not prohibit a carrier or any other
17 insurer from offering, issuing, or renewing a stop loss insurance
18 policy to a multiple employer arrangement. ¹
19 (cf: P.L.1997, c.146, s.8) **】²**

20
21 ²a. (New section) A stop loss insurer that offers, issues, or
22 renews a stop loss insurance policy shall establish a per person
23 attachment point or retention or aggregate attachment point or
24 retention, or both, which meet the following requirements:

25 (1) If the policy establishes a per person attachment point or
26 retention, that specific attachment point or retention shall not be
27 less than:

28 (a) \$40,000 for all stop loss insurance policies written, issued,
29 administered or renewed on or after January 1, 2020;

30 (b) \$45,000 for all stop loss insurance policies written, issued,
31 administered or renewed on or after January 1, 2021; and

32 (c) \$50,000 for all stop loss insurance policies written, issued,
33 administered or renewed on or after January 1, 2022; and

34 (2) If the policy establishes an aggregate attachment point or
35 retention, that aggregate attachment point or retention shall not be
36 less than 150% of expected claims per plan year.

37 b. A stop loss insurer shall not consider the health status or
38 prescription drug usage data of an eligible employee or a dependent
39 in the marketing, offering, or pricing of stop loss insurance to a
40 small employer, and shall not deny stop loss insurance coverage to
41 a small employer on the basis of the health status of an eligible
42 employee or a dependent. In addition to any other applicable
43 penalties, a violation of this subsection shall be considered an unfair
44 trade practice and a violation of N.J.S.17B:30-1 et seq., and any
45 carrier that violates this subsection shall be subject to the penalties
46 and other remedies provided for in N.J.S. 17B:30-17.

1 c. A stop loss insurer shall renew, at the option of the small
2 employer, a stop loss insurance policy written, issued, administered,
3 or renewed on or after January 1, 2020, or in force on or after
4 January 1, 2020 except as follows:

5 (1) (a) For nonpayment of the required premiums by the small
6 employer, if the small employer has been duly notified and billed
7 for the charge and at least a 30-day grace period has elapsed since
8 the date of notification.

9 (b) A stop loss insurer shall continue to provide coverage as
10 required by the small employer's policy during the grace period
11 described in this paragraph. Nothing in this section shall be
12 construed to affect or impair the small employer's or the stop loss
13 insurer's other rights and responsibilities pursuant to the policy.

14 (2) If the stop loss insurer demonstrates fraud or an intentional
15 misrepresentation of material fact by the small employer under the
16 terms of the stop loss insurance policy.

17 (3) If the stop loss insurer has been determined by the
18 commissioner to be financially impaired.

19 (4) If the stop loss insurer ceases to write, issue, or administer
20 new stop loss insurance policies in this State, provided that the
21 following conditions are satisfied:

22 (a) Notice of the decision to cease writing, issuing, or
23 administering new or existing stop loss insurance policies in this
24 State is provided to the commissioner and to the small employer at
25 least 180 days prior to the discontinuation of the coverage.

26 (b) A stop loss insurance policy subject to this paragraph shall
27 not be canceled until 180 days after the date of the notice required
28 under subparagraph (a) of this paragraph. During that time, the
29 stop-loss insurer shall continue to comply with the requirements of
30 this section.

31 d. This section shall not apply to stop loss insurance issued to a
32 multiple employer welfare arrangement that is in compliance with
33 P.L.2001, c.352 (C.17B:27C-1 et seq.). This exclusion shall apply
34 only to stop loss insurance provided to the multiple employer
35 welfare arrangement and shall not apply to the small employer
36 groups that comprise the multiple employer welfare arrangement.²

37
38 3. This act shall take effect on the 90th day next following the
39 date of enactment.