

ASSEMBLY, No. 4762

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED OCTOBER 8, 2020

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Provides that healthcare benefits plan, fully or partly paid by public employer, cannot cover public employee's spouse who is subject of divorce from bed and board.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning coverage under public employee health benefits
2 programs and amending and supplementing various parts of the
3 statutory law.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Section 1 of P.L.1979, c.391 (C.18A:16-12) is amended to
9 read as follows:

10 1. As used in this act:

11 a. "Dependents" means an employee's spouse and the
12 employee's unmarried children, including stepchildren, legally
13 adopted children, and, at the option of the local board of education
14 and the carrier, children placed by the Department of Children and
15 Families with a resource family, under the age of 19 who live with
16 the employee in a regular parent-child relationship, and may also
17 include, at the option of the local board of education and the carrier,
18 other unmarried children of the employee under the age of 23 who
19 are dependent upon the employee for support and maintenance, but
20 shall not include a spouse or child while serving in the military
21 service. At the option of the local board of education, "dependent"
22 may include an employee's domestic partner as defined in section 3
23 of P.L.2003, c.246 (C.26:8A-3). The term "dependents" shall not
24 include any spouse during the time that a judgment for divorce from
25 bed and board shall remain in force and effect or any civil union
26 partner during the time that a judgment for legal separation from a
27 partner in a civil union shall remain in force and effect;

28 b. "Employees" may, at the option of the local board of
29 education, include elected officials, but shall not include persons
30 employed on a short-term, seasonal, intermittent or emergency
31 basis, persons compensated on a fee basis, or persons whose
32 compensation from the local board of education is limited to
33 reimbursement of necessary expenses actually incurred in the
34 discharge of their duties;

35 c. "Federal Medicare Program" means the coverage provided
36 under Title XVIII of the Social Security Act as amended in 1965, or
37 its successor plan or plans.

38 (cf: P.L.2006, c.47, s.92)

39

40 2. N.J.S.40A:10-16 is amended to read as follows:

41 40A:10-16. As used in this subarticle:

42 a. "Dependents" means an employee's spouse and the
43 employee's unmarried children, including stepchildren, legally
44 adopted children, and, at the option of the employer and the carrier,
45 children placed by the Division of Youth and Family Services,

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 under the age of 19 who live with the employee in a regular parent-
2 child relationship, and may also include, at the option of the
3 employer and the carrier, other unmarried children of the employee
4 under the age of 23 who are dependent upon the employee for
5 support and maintenance, but shall not include a spouse or child
6 while serving in the military service. At the option of the employer,
7 "dependent" may include an employee's domestic partner as defined
8 in section 3 of P.L.2003, c.246 (C.26:8A-3). The term "dependents"
9 shall not include any spouse during the time that a judgment for
10 divorce from bed and board shall remain in force and effect or any
11 civil union partner during the time that a judgment for legal
12 separation from a partner in a civil union shall remain in force and
13 effect;

14 b. "Employees" may, at the option of the employer, include
15 elected officials, but shall not include persons employed on a short-
16 term, seasonal, intermittent or emergency basis, persons
17 compensated on a fee basis, or persons whose compensation from
18 the employer is limited to reimbursement of necessary expenses
19 actually incurred in the discharge of their duties;

20 c. "Federal Medicare Program" means the coverage provided
21 under Title XVIII of the Social Security Act as amended in 1965, or
22 its successor plan or plans.

23 (cf: P.L.2005, c.334, s.2)

24
25 3. Section 2 of P.L.1961, c.49 (C.52:14-17.26) is amended to
26 read as follows:

27 2. As used in P.L.1961, c.49 (C.52:14-17.26 et seq.):

28 (a) The term "State" means the State of New Jersey.

29 (b) The term "commission" means the State Health Benefits
30 Commission, created by section 3 of P.L.1961, c.49 (C.52:14-
31 17.27).

32 (c) (1) The term "employee" means an appointive or elective
33 officer, a full-time employee of the State of New Jersey, or a full-
34 time employee of an employer other than the State who appears on
35 a regular payroll and receives a salary or wages for an average of
36 the number of hours per week as prescribed by the governing body
37 of the participating employer which number of hours worked shall
38 be considered full-time, determined by resolution, and not less than
39 20.

40 (2) After the effective date of P.L.2010, c.2, the term
41 "employee" means (i) a full-time appointive or elective officer
42 whose hours of work are fixed at 35 or more per week, a full-time
43 employee of the State, or a full-time employee of an employer other
44 than the State who appears on a regular payroll and receives a
45 salary or wages for an average of the number of hours per week as
46 prescribed by the governing body of the participating employer
47 which number of hours worked shall be considered full-time,
48 determined by resolution, and not less than 25, or (ii) an appointive

1 or elective officer, an employee of the State, or an employee of an
2 employer other than the State who has or is eligible for health
3 benefits coverage provided under P.L.1961, c.49 (C.52:14-17.25 et
4 seq.) or sections 31 through 41 of P.L.2007, c.103 (C.52:14-17.46.1
5 et seq.) on that effective date and continuously thereafter provided
6 the officer or employee is covered by the definition in paragraph (1)
7 of this subsection. For the purposes of this act an employee of
8 Rutgers, The State University of New Jersey, shall be deemed to be
9 an employee of the State, and an employee of the New Jersey
10 Institute of Technology shall be considered to be an employee of
11 the State during such time as the Trustees of the Institute are party
12 to a contractual agreement with the State Treasurer for the provision
13 of educational services. The term "employee" shall further mean,
14 for purposes of this act, a former employee of the South Jersey Port
15 Corporation, who is employed by a subsidiary corporation or other
16 corporation, which has been established by the Delaware River Port
17 Authority pursuant to subdivision (m) of Article I of the compact
18 creating the Delaware River Port Authority (R.S.32:3-2), as defined
19 in section 3 of P.L.1997, c.150 (C.34:1B-146), and who is eligible
20 for continued membership in the Public Employees' Retirement
21 System pursuant to subsection j. of section 7 of P.L.1954, c.84
22 (C.43:15A-7).

23 For the purposes of this act the term "employee" shall not
24 include persons employed on a short-term, seasonal, intermittent or
25 emergency basis, persons compensated on a fee basis, persons
26 having less than two months of continuous service or persons whose
27 compensation from the State is limited to reimbursement of
28 necessary expenses actually incurred in the discharge of their
29 official duties, provided, however, that the term "employee" shall
30 include persons employed on an intermittent basis to whom the
31 State has agreed to provide coverage under P.L.1961, c.49
32 (C.52:14-17.25 et seq.) in accordance with a binding collective
33 negotiations agreement. An employee paid on a 10-month basis,
34 pursuant to an annual contract, will be deemed to have satisfied the
35 two-month waiting period if the employee begins employment at
36 the beginning of the contract year. The term "employee" shall also
37 not include retired persons who are otherwise eligible for benefits
38 under this act but who, although they meet the age or disability
39 eligibility requirement of Medicare, are not covered by Medicare
40 Hospital Insurance, also known as Medicare Part A, and Medicare
41 Medical Insurance, also known as Medicare Part B. A determination
42 by the commission that a person is an eligible employee within the
43 meaning of this act shall be final and shall be binding on all parties.

44 (d) (1) The term "dependents" means an employee's spouse,
45 partner in a civil union couple or an employee's domestic partner as
46 defined in section 3 of P.L.2003, c.246 (C.26:8A-3), and the
47 employee's unmarried children under the age of 23 years who live
48 with the employee in a regular parent-child relationship. "Children"

1 shall include stepchildren, legally adopted children and children
2 placed by the Division of Child Protection and Permanency in the
3 Department of Children and Families, provided they are reported
4 for coverage and are wholly dependent upon the employee for
5 support and maintenance. A spouse, partner in a civil union couple,
6 domestic partner or child enlisting or inducted into military service
7 shall not be considered a dependent during the military service.
8 The term "dependents" shall not include spouses, partners in a civil
9 union couple or domestic partners of retired persons who are
10 otherwise eligible for the benefits under this act but who, although
11 they meet the age or disability eligibility requirement of Medicare,
12 are not covered by Medicare Hospital Insurance, also known as
13 Medicare Part A, and Medicare Medical Insurance, also known as
14 Medicare Part B.

15 (2) Notwithstanding the provisions of paragraph (1) of this
16 subsection to the contrary and subject to the provisions of paragraph
17 (3) of this subsection, for the purposes of an employer other than
18 the State that is participating in the State Health Benefits Program
19 pursuant to section 3 of P.L.1964, c.125 (C.52:14-17.34), the term
20 "dependents" means an employee's spouse or partner in a civil
21 union couple and the employee's unmarried children under the age
22 of 23 years who live with the employee in a regular parent-child
23 relationship. "Children" shall include stepchildren, legally adopted
24 children and children placed by the Division of Child Protection
25 and Permanency in the Department of Children and Families
26 provided they are reported for coverage and are wholly dependent
27 upon the employee for support and maintenance. A spouse, partner
28 in a civil union couple or child enlisting or inducted into military
29 service shall not be considered a dependent during the military
30 service. The term "dependents" shall not include spouses or partners
31 in a civil union couple of retired persons who are otherwise eligible
32 for benefits under P.L.1961, c.49 (C.52:14-17.25 et seq.) but who,
33 although they meet the age or disability eligibility requirement of
34 Medicare, are not covered by Medicare Hospital Insurance, also
35 known as Medicare Part A, and Medicare Medical Insurance, also
36 known as Medicare Part B.

37 (3) An employer other than the State that is participating in the
38 State Health Benefits Program pursuant to section 3 of
39 P.L.1964, c.125 (C.52:14-17.34) may adopt a resolution providing
40 that the term "dependents" as defined in paragraph (2) of this
41 subsection shall include domestic partners as provided in paragraph
42 (1) of this subsection.

43 (4) After the effective date of P.L. , c. (pending before the
44 Legislature as this bill), the term "spouse" shall not include any
45 person to whom a judgment for divorce from bed and board shall
46 remain in force and effect; and the term "partner in a civil union"
47 shall not include any person to whom a judgment for legal

1 separation from a partner in a civil union shall remain in force and
2 effect.

3 (e) The term "carrier" means a voluntary association,
4 corporation or other organization, including a health maintenance
5 organization as defined in section 2 of the "Health Maintenance
6 Organizations Act," P.L.1973, c.337 (C.26:2J-2), which is lawfully
7 engaged in providing or paying for or reimbursing the cost of,
8 personal health services, including hospitalization, medical and
9 surgical services, under insurance policies or contracts, membership
10 or subscription contracts, or the like, in consideration of premiums
11 or other periodic charges payable to the carrier.

12 (f) The term "hospital" means (1) an institution operated
13 pursuant to law which is primarily engaged in providing on its own
14 premises, for compensation from its patients, medical diagnostic
15 and major surgical facilities for the care and treatment of sick and
16 injured persons on an inpatient basis, and which provides such
17 facilities under the supervision of a staff of physicians and with 24
18 hour a day nursing service by registered graduate nurses, or (2) an
19 institution not meeting all of the requirements of (1) but which is
20 accredited as a hospital by the Joint Commission on Accreditation
21 of Hospitals. In no event shall the term "hospital" include a
22 convalescent nursing home or any institution or part thereof which
23 is used principally as a convalescent facility, residential center for
24 the treatment and education of children with mental disorders, rest
25 facility, nursing facility or facility for the aged or for the care of
26 drug addicts or alcoholics.

27 (g) The term "State managed care plan" means a health care
28 plan under which comprehensive health care services and supplies
29 are provided to eligible employees, retirees, and dependents: (1)
30 through a group of doctors and other providers employed by the
31 plan; or (2) through an individual practice association, preferred
32 provider organization, or point of service plan under which services
33 and supplies are furnished to plan participants through a network of
34 doctors and other providers under contracts or agreements with the
35 plan on a prepayment or reimbursement basis and which may
36 provide for payment or reimbursement for services and supplies
37 obtained outside the network. The plan may be provided on an
38 insured basis through contracts with carriers or on a self-insured
39 basis, and may be operated and administered by the State or by
40 carriers under contracts with the State.

41 (h) The term "Medicare" means the program established by the
42 "Health Insurance for the Aged Act," Title XVIII of the "Social
43 Security Act," Pub.L.89-97 (42 U.S.C. s.1395 et seq.), as amended,
44 or its successor plan or plans.

45 (i) The term "traditional plan" means a health care plan which
46 provides basic benefits, extended basic benefits and major medical
47 expense benefits as set forth in section 5 of P.L.1961, c.49
48 (C.52:14-17.29) by indemnifying eligible employees, retirees, and

1 dependents for expenses for covered health care services and
2 supplies through payments to providers or reimbursements to
3 participants.

4 (j) The term "successor plan" means a State managed care plan
5 that shall replace the traditional plan and that shall provide benefits
6 as set forth in subsection (B) of section 5 of P.L.1961, c.49
7 (C.52:14-17.29) with provisions regarding reimbursements and
8 payments as set forth in paragraph (1) of subsection (C) of section 5
9 of P.L.1961, c.49 (C.52:14-17.29).
10 (cf: P.L.2012, c.16, s.137)
11

12 4. Section 32 of P.L.2007, c.103 (C.52:14-17.46.2) is amended
13 to read as follows:

14 32. As used in the School Employees' Health Benefits Program
15 Act, sections 31 through 41 of P.L.2007, c.103 (C.52:14-17.46.1
16 through C.52:14-17.46.11):

17 a. The term "State" means the State of New Jersey.

18 b. The term "commission" means the School Employees'
19 Health Benefits Commission, created by section 33 of
20 P.L.2007, c.103 (C.52:14-17.46.3).

21 c. The term "employer" means local school district, regional
22 school district, county vocational school district, county special
23 services school district, jointure commission, educational services
24 commission, State-operated school district, charter school, county
25 college, any officer, board, or commission under the authority of
26 the Commissioner of Education or of the State Board of Education,
27 and any other public entity which is established pursuant to
28 authority provided by Title 18A of the New Jersey Statutes, but
29 excluding the State public institutions of higher education and
30 excluding those public entities where the employer is the State of
31 New Jersey.

32 d. (1) The term "employee" means a person employed in any
33 full time capacity by an employer, and shall include persons defined
34 as a school employee by the regulations of the State Health Benefits
35 Commission in effect on the effective date of the School
36 Employees' Health Benefits Program Act. "Full-time" shall have the
37 same meaning as in the regulation of the State Health Benefits
38 Commission regarding local coverage in effect on the effective date
39 of the School Employees' Health Benefits Program Act.

40 (2) After the effective date of P.L.2010, c.2, the term
41 "employee" means (a) a person employed in any full-time capacity
42 by an employer who appears on a regular payroll and receives a
43 salary or wages for an average of the number of hours per week as
44 prescribed by the governing body of the participating employer
45 which number of hours worked shall be considered full-time,
46 determined by resolution, and not less than 25, and shall include
47 persons defined as a school employee by the regulations of the State
48 Health Benefits Commission in effect on the effective date of the

1 School Employees' Health Benefits Program Act, or (b) a person
2 employed in any full-time capacity by an employer who has or is
3 eligible for health benefits coverage provided under P.L.1961, c.49
4 (C.52:14-17.25 et seq.) or sections 31 through 41 of P.L.2007, c.103
5 (C.52:14-17.46.1 et seq.) on that effective date and continuously
6 thereafter provided the person is covered by the definition in
7 paragraph (1) of this subsection. The term "employee" shall not
8 include persons employed on a short-term, seasonal, intermittent, or
9 emergency basis, persons compensated on a fee basis, persons
10 having less than two months of continuous service or persons whose
11 compensation is limited to reimbursement of necessary expenses
12 actually incurred in the discharge of their official duties. An
13 employee paid on a 10-month basis, pursuant to an annual contract,
14 shall be deemed to have satisfied the two-month waiting period if
15 the employee begins employment at the beginning of the contract
16 year. The term "employee" shall also not include retired persons
17 who are otherwise eligible for benefits under the School Employees'
18 Health Benefits Program but who, although they meet the age or
19 disability eligibility requirement of Medicare, are not covered by
20 Medicare Hospital Insurance, also known as Medicare Part A, and
21 Medicare Medical Insurance, also known as Medicare Part B. A
22 determination by the commission that a person is an eligible
23 employee for the purposes of the School Employees' Health
24 Benefits Program shall be final and binding on all parties.

25 e. (1) The term "dependents" means an employee's spouse,
26 domestic partner, or partner in a civil union couple, and unmarried
27 children under the age of 23 years who live in a regular parent/child
28 relationship. "Children" shall include stepchildren, legally adopted
29 children and children placed by the Division of Youth and Family
30 Services in the Department of Children and Families, provided they
31 are reported for coverage and are wholly dependent upon the
32 employee for support and maintenance. A spouse, domestic
33 partner, partner in a civil union couple, or child enlisting or
34 inducted into military service shall not be considered a dependent
35 during the military service. The term "dependents" shall not
36 include spouses, domestic partners, or partners in a civil union
37 couple, of retired persons who are otherwise eligible for the benefits
38 under the School Employees' Health Benefits Program but who,
39 although they meet the age or disability eligibility requirement of
40 Medicare, are not covered by Medicare Hospital Insurance, also
41 known as Medicare Part A, and Medicare Medical Insurance, also
42 known as Medicare Part B.

43 (2) After the effective date of P.L. , c. (pending before the
44 Legislature as this bill), the term "spouse" shall not include any
45 person to whom a judgment for divorce from bed and board shall
46 remain in force and effect; and the term "partner in a civil union"
47 shall not include any person to whom a judgment for legal

1 separation from a partner in a civil union shall remain in force and
2 effect.

3 f. The term "carrier" means a voluntary association,
4 corporation or other organization, including but not limited to a
5 health maintenance organization as defined in section 2 of the
6 "Health Maintenance Organizations Act," P.L.1973, c.337 (C.26:2J-
7 2), which is lawfully engaged in providing or paying for or
8 reimbursing the cost of, personal health services, including
9 hospitalization, medical and surgical services under insurance
10 policies or contracts, membership or subscription contracts, or the
11 like, in consideration of premiums or other periodic charges payable
12 to the carrier.

13 g. The term "hospital" means:

14 (1) an institution operated pursuant to law which is primarily
15 engaged in providing on its own premises, for compensation from
16 its patients, medical diagnostic and major surgical facilities for the
17 care and treatment of sick and injured persons on an inpatient basis,
18 and which provides such facilities under the supervision of a staff
19 of physicians and with 24 hour a day nursing service by registered
20 graduate nurses, or

21 (2) an institution not meeting all of the requirements of
22 paragraph (1) but which is accredited as a hospital by the Joint
23 Commission on Accreditation of Hospitals. In no event shall the
24 term "hospital" include a convalescent nursing home or any
25 institution or part thereof which is used principally as a
26 convalescent facility, residential center for the treatment and
27 education of children with mental disorders, rest facility, nursing
28 facility or facility for the aged or for the care of drug addicts or
29 alcoholics.

30 h. The term "Medicare" means the program established by the
31 "Health Insurance for the Aged Act," Title XVIII of the "Social
32 Security Act," Pub.L.89-97 (42 U.S.C. s.1395 et seq.), as amended,
33 or its successor plan or plans.

34 i. The term "managed care plan" means a health care plan
35 under which comprehensive health care services and supplies are
36 provided to eligible employees, retirees, and dependents: (1)
37 through a group of doctors and other providers employed by the
38 plan; or (2) through an individual practice association, preferred
39 provider organization, or point of service plan under which services
40 and supplies are furnished to plan participants through a network of
41 doctors and other providers under contracts or agreements with the
42 plan on a prepayment or reimbursement basis and which may
43 provide for payment or reimbursement for services and supplies
44 obtained outside the network. The plan may be provided on an
45 insured basis through contracts with carriers or on a self-insured
46 basis, and may be operated and administered by the State or by
47 carriers under contracts with the State.

1 j. The term "successor plan" means a managed care plan that
2 shall replace the "traditional plan," as defined in section 2 of
3 P.L.1961, c.49 (C.52:14-17.26), and that shall provide benefits as
4 set forth in section 36 of P.L.2007, c.103 (C.52:14-17.46.6), and
5 provide out-of-network benefits to participants with a payment by
6 the plan of 80% of reasonable and customary charges as set forth in
7 section 37 of P.L.2007, c.103 (C.52:14-17.46.7) and as may be
8 adjusted in accordance with section 40 of P.L.2007, c.103 (C.52:14-
9 17.46.10).

10 (cf: P.L.2010, c.2, s.10)

11
12 5. (New section) Notwithstanding the provisions of any other
13 law to the contrary, all health benefits plans and programs of any
14 independent State authority and of any public institution of higher
15 education in this State, not otherwise covered under the State
16 Health Benefits Program, P.L.1961, c.49 (C.52:14-17.25 et seq.), or
17 the School Employees' Health Benefits Program, P.L.2007, c.103
18 (C.52:14-17.46.1 et seq.), shall not provide coverage for any person
19 as a dependent who is a spouse during the time that a judgment for
20 divorce from bed and board shall remain in force and effect or a
21 civil union partner during the time that a judgment for legal
22 separation from a civil union partner shall remain in force and
23 effect. As used in this section, "independent State authority" means
24 a public authority, board, commission, corporation, or other agency
25 or instrumentality of the State allocated in, but not of, a principal
26 department of State government pursuant to Article V, Section IV,
27 paragraph 1 of the New Jersey Constitution, or which is not subject
28 to supervision or control by the department in which it is allocated,
29 and a regional authority; and "public institution of higher
30 education" means any public university or college, including
31 Rutgers, the State University and New Jersey Institute of
32 Technology.

33
34 6. (New section) Notwithstanding the provisions of any other
35 law to the contrary, all health benefits plans and programs of any
36 local unit, not otherwise covered under N.J.S.40A:10-17 or the
37 State Health Benefits Program, P.L.1961, c.49 (C.52:14-17.25 et
38 seq.), shall not provide coverage for any person as a dependent who
39 is a spouse during the time that a judgment for divorce from bed
40 and board shall remain in force and effect or a civil union partner
41 during the time that a judgment for legal separation from a civil
42 union partner shall remain in force and effect. As used in this
43 section, "local unit" means any county, any joint meeting of
44 counties, any municipality, any special district of any public body
45 corporate and politic created or established under any law of this
46 State by or on behalf of any one or more counties or individual
47 municipalities, as appropriate, or any agency or other
48 instrumentality thereof, including any local authority, board,

1 commission, department or agency of the foregoing having custody
2 of funds.

3

4 7. This act shall take effect on the 90th day after the date of
5 enactment.

6

7

8

STATEMENT

9

10 The State of New Jersey is dedicated to providing efficient and
11 effective government to its residents. Therefore, all means
12 available to reduce unnecessary expenditures of taxpayer money
13 should be explored and implemented. Public employers in this
14 State provide healthcare benefits to their employees and employees'
15 families. These benefits are paid, in whole or in part, from
16 revenues collected as taxes from the residents and businesses of this
17 State. Accordingly, in order to protect taxpayers from unnecessary
18 government spending, individuals who are, for all intents and
19 purposes, not dependents of public employees should not be
20 receiving healthcare benefits at the public's expense.

21 This bill addresses a legal loophole that permits individuals who
22 are no longer dependent on a public employee to continue to receive
23 healthcare benefits under a plan provided by a public employer. In
24 order to close this loophole, this bill excludes from coverage as a
25 dependent under public employee healthcare benefits plans: (1)
26 spouses who are divorced from bed and board; and (2) legally
27 separated civil union partners. The bill applies to the State Health
28 Benefits Program, the School Employees' Health Benefits Program,
29 and the healthcare benefits plans of any board of education, local
30 government unit, independent State authority, and public institution
31 of higher education.

32 A divorce from bed and board is a judgment from the courts
33 when both spouses agree to separate from one another and divide
34 marital property but remain legally married. Because this type of
35 judgment is not a formal divorce, these individuals remain eligible
36 to receive healthcare benefits under their spouse's healthcare plan.
37 Similarly, New Jersey law allows legally separated civil union
38 partners to receive healthcare benefits under their civil union
39 partner's healthcare plan despite being legally separated.