

Testimony in Support on Assembly Bill 5137 and Assembly Bill 4294

Linda J. Schwimmer, JD
President and CEO
New Jersey Health Care Quality Institute
lschwimmer@njhcqi.org
March 9, 2023

Thank you, Chairman McKeon and members of the Assembly Financial Institutions and Insurance Committee for considering this testimony on New Jersey's Small Employer health insurance market and in support of A.5137 and A.4294. My name is Linda Schwimmer, and I am President and CEO of New Jersey Health Care Quality Institute.

Background on the Quality Institute and its Research on New Jersey's Small Employer Market

The New Jersey Health Care Quality Institute (Quality Institute) is a nonpartisan, nonprofit membership organization whose mission is to improve the safety, quality, and affordability of health care for everyone. Both bills support our work in ensuring health care is made affordable and accessible.

In July 2020, we released a white paper on the Small Employer Market and how to address its declining enrollment and rising premium costs. In June 2022, we updated and re-released the [white paper](#) with the current status of the market and nine recommendations to improve its affordability for small employers and their employees. The two bills before you today include many of the recommendations in the white paper. **The Quality Institute supports both bills and proposed committee amendments and urges their passage and enactment.**

Background on the Small Employer Market and Its Challenges

Currently, there are more than 800,000 small businesses in New Jersey accounting for more than 98% of all businesses. Small employers (2-50 full-time employees) are not required by law to provide health insurance to their employees, but these companies know the value of health insurance coverage to their employees and how it impacts their ability to attract and retain workers. Moreover, employers can provide their employees with health insurance and not have the benefit considered as income, which makes coverage less expensive to the employee than if they had to purchase insurance in the individual market.

The State's Small Employer Market is the primary market for employers to secure coverage. Unlike unregulated options, plans in the Small Employer Market are regulated by the NJ Department of Banking and Insurance. These plans must sell to all eligible small employers, must

renew coverage every year, and may not use factors such as gender, health status, or prior conditions in determining pricing and coverage.

Despite these benefits, the total number of New Jerseyans with health insurance coverage through the State's Small Employer Market has declined by 71% from a high of 981,000 in 2005 to under 287,000 in 2022, indicating a loss of 41,000 covered lives a year.

New Jersey's small employers have left the Small Employer market for two major reasons: changes in eligibility and rising premiums. The ACA changed the definition of who could be a small group and many two-person family businesses were moved into the individual market. The second reason is the rising premium costs. While significant attention and funding has been put into expanding coverage and increasing affordability through NJ FamilyCare and the Individual Market, the Small Employer Market has been ignored and employers struggle to provide affordable coverage for their employees. The State has not updated laws or regulations for this market for more than a decade, even as the rest of the health care industry and laws have substantially changed. Nor have they offered any tax breaks or subsidies. Out of date requirements have contributed to the decline of the Small Employer Market and increasing premium costs.

Indeed, my organization purchases in the Small Employer Market and experienced premium rate increases of over 10 percent for two years in a row. This is unsustainable for small businesses and non-profit organizations.

Increasing premiums and out of date regulations led to the growth of alternative, unregulated insurance choices for small employers whose employees were healthier or less likely to have pregnancies or health events. These market shifts caused the risk pool of the lives remaining in the Small Employer Market to increase and furthered the trend of increased premiums. For a healthy market, you want everyone in the pool—young and old, healthy people and those with preexisting conditions, as well as men and women. The market cannot be expected to survive if the healthiest and least costly people leave the market.

Why Preserve the Small Employer Market?

For small businesses to compete in New Jersey, they need to offer health benefits to their employees. *The Small Employer Market is the only insurance market where an employer is guaranteed the right to purchase insurance even though it has mostly female employees of childbearing age, or older workers, or a worker with certain chronic conditions.* The Small Employer Market's existence since 1994 has been a competitive advantage for New Jersey and something that small business owners have valued. When the market had close to a million people covered under it, it was a thriving competitive market which enabled small businesses to offer competitive benefits to attract and retain workers. To regain the market's attractive elements, changes must be made for plan year 2024 and beyond. Timing is essential and those changes must be enacted in early 2023 to be ready for 2024.

Comments on the bills:

A.5137, the “Small Business Health Insurance Affordability Act,” includes several important modernizing elements:

- **Market participation:** Removes requirement for plans to sell in the individual market if they sell in the small group market – increases market flexibility.
- **Market re-entry:** The bill would allow the Commissioner to waive a state-based, 5-year prohibition on carriers re-entering the individual and small employer health insurance markets if the carrier withdraws from a market. This change may increase competition by allowing insurance plans that left the markets to reenter.
- **Minimum Standard Requirements:** The bill would strike outdated plan design requirements so that newly designed plans may better align with the actuarial cost sharing requirements in the Affordable Care Act. The changes are consistent with other states and would allow the board and the department to update standards and review them annually to better regulate this market.
- **Employer survey:** The bill would require insurance brokers to survey employers to examine and track where small employers who do not continue coverage through a small employer health benefits plan elect to purchase coverage. This information will help state policy makers better understand this market and make adjustments to keep it competitive and attractive.
- **Closed formulary:** The bill would allow carriers to offer plans with a closed formulary, so long as they also offer a plan with an open formulary option. The bill would also add greater consumer protections to the carriers’ internal appeal process. This modification should reduce premium costs and is a familiar plan design in other commercial products. New Jersey is the only state that prohibits closed formularies in its small group market, which makes New Jersey’s insurance more expensive. This may also reduce the prior authorization disputes between plans and providers, which would in turn reduce administrative costs and provider dissatisfaction. Initial calculations from an industry source estimate that this change could create a savings of approximately \$10-\$12 per member per month (PMPM) or 2% premium savings annually.
- **SEHB Board membership:** The membership of the board would be updated for the first time in decades to better reflect the market and its mission.

A.4294 would require the Department of Banking and Insurance to study the best approach and value of providing a tax credit for small employers who provide health insurance benefits to their employees. It would also require the Department to study the current age rating system in the Small Employer Market. These studies are necessary to continue to modernize and protect this market.



NEW JERSEY
HEALTH CARE
**QUALITY
INSTITUTE**

P.O. BOX 2246
PRINCETON, NJ 08543
PHONE: 609-452-5980
WWW.NJHCQI.ORG

This legislation is crucial to strengthen and stabilize the Small Employer Market to ensure that small businesses will be able to provide quality health insurance coverage to their employees and their families. The Quality Institute thanks the Committee for the ability to comment on these important pieces of legislation.