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****IMPORTANT****
DID YOUR COMPANY MISS A DEADLINE?

Carriers that offer, sell, issue, deliver, make effective or renew group health insurance policies that include CONVERSION provisions and/or nongroup/individual health insurance policies are especially advised to review the contents of this bulletin to avoid enforcement actions and related penalties.

Bulletin No. 98-02

TO: Commercial Health Insurers, Blue Cross and Blue Shield of Massachusetts, and Health Maintenance Organizations

FROM: Linda Ruthardt, Commissioner

RE: Conversion Nongroup Health Plans and Closed Nongroup Health Plans, and the Implementation of the Nongroup Health Insurance Law

DATE: April 2, 1998

CHANGES TO MASSACHUSETTS HEALTH INSURANCE STATUTES DESIGNED TO REFORM HEALTH INSURANCE COVERAGE FOR PERSONS BUYING SUCH COVERATE OUSTIDE OF AN EMPLOYER GROUP PLAN *DO AFFECT GROUP POLICIES.* PLEASE READ THIS BULLETIN CAREFULLY.

- **Introduction**

The term "nongroup" is used in M.G.L. c. 176M ("Chapter 176M"), the Nongroup Health Insurance Law, to refer to health insurance coverage sold to individuals--whether the coverage is for an individual or for an individual and dependents. Because the use of the term "individual" results in confusion between the employer group and nongroup markets and the individual/family coverage designation usually used for employer group coverage, the term "nongroup" is used in Chapter 176M to describe coverage sold outside of an employer group. Nongroup insurance may be for an individual or for an individual and dependents.

Conversion nongroup health plans are generally those plans sold as "group conversion coverage" to former employees of an employer group or former members of a group covered through a trust or association when the person is no longer eligible for group coverage.

As discussed in more detail below, most types of policies that were sold outside the employer group market prior to the implementation of Chapter 176M reforms are now in closed blocks; there is only a short list of types of policies which Chapter 176M did not close.

The purpose of this bulletin is to reiterate the following and to help carriers avoid unnecessary fines, administrative fees and/or enforcement actions:

(1) all conversion nongroup health plans (often referred to as "group conversion" policies) must be guaranteed issue health plans as of the first day of the first open enrollment period for guaranteed issue health plans, which was October 1, 1997;

(2) all carriers offering conversion nongroup health plans as of October 1, 1997 were required to submit rate and form filings to the Division by August 20, 1997 and must submit such filings *as soon as possible* if they have not done so already;

(3) as of October 1, 1997, conversion nongroup health plans *or* any other type of nongroup health plans that were not a guaranteed issue health plan became closed plans; and

(4) all carriers with closed plans were required to submit rate and form filings to the Division by August 20, 1997 and must submit such filings *as soon as possible* if they have not done so already.

For information regarding the implementation of Chapter 176M, carriers should refer to Division of Insurance ("Division") Bulletin No. 97-07, issued on June 7, 1997, and regulation 211 CMR 41.00--entitled *Nongroup Health Insurance Rate and Policy Form Filings, Review, and Hearing Procedures Under M.G.L. c. 176M*, in addition to Chapter 176M.

Questions regarding this bulletin should be directed to Kevin Beagan, Director of the Health Unit of the State Rating Bureau at (617) 521-7347, or mailed to him at the Division of Insurance, 470 Atlantic Avenue, Boston, MA 02210-2223 (faxes may be sent to (617) 521-7771).

- **Conversion Nongroup Health Plans (Often Referred to as "Group Conversion Policies")**

As discussed in Bulletin No. 97-07, Chapter 176M uses the term "conversion nongroup health plan" when describing group conversion policies. Under Chapter 176M, section 1, a "conversion nongroup health plan" is "a nongroup health plan, offered, sold, issued, delivered,

made effective or renewed by a carrier to a former employee or member or the dependents, including a spouse of said former employee or member, within or without the commonwealth pursuant to the terms of a group policy, contract or agreement with said former employee's former employer, or through a trust or association...." The definition excludes policies for continued group coverage under the federal COBRA provisions or the Massachusetts Small Group Insurance Law group continuation coverage provisions, which are similar to the federal COBRA provisions.

As discussed in Bulletin No. 97-07, Chapter 176M, section 2(a) states that conversion nongroup health plans are subject to the requirements of Chapter 176M except that the offer, sale, renewal or delivery of a conversion nongroup health plan does not, in and of itself, obligate the carrier to otherwise offer, sell, issue, renew or deliver a nongroup health plan, including a guaranteed issue health plan, to any person to whom the carrier does not have such an obligation pursuant to a group policy, contract or agreement with an employer or through a trust or association.

As discussed below, **conversion nongroup health plans that do not meet the requirements of a guaranteed issue health plan became closed plans as of October 1, 1997.**

- **Closed Plans**

Under Chapter 176M, section 1, a "closed plan" is "a nongroup health plan issued by a carrier to a natural person for said person, as well as any dependents, prior to the first day of the first open enrollment period specified in" Chapter 176M, section 3(b). New dependents may be added to closed plans under this definition.

As discussed in Bulletin No. 97-07, under Chapter 176M, section 3, as of the first day of the first open enrollment period for the guaranteed issue health plans, carriers in the nongroup health insurance market in Massachusetts will offer guaranteed issue health plans in accordance with the provisions of Chapter 176M. As of that day, no types of nongroup health plans may be sold except the guaranteed issue health plans. All other nongroup plans in effect on that day will be considered to be closed plans. The first day of the first open enrollment period was October 1, 1997.

Please note that these provisions regarding closed plans apply to conversion nongroup health plans, discussed above, in addition to "regular" nongroup health plans.

A carrier may not allow new enrollment in conversion nongroup health plans which are closed plans in a manner inconsistent with the provisions of Chapter 176M. A carrier which has an agreement with an employer to provide group conversion coverage but does not have an approved guaranteed issue health plan should continue to provide the group product to affected individuals until the carrier does have an approved guaranteed issue health plan; the carrier and employer may work together to determine how the affected individuals' experience will be treated by the carrier.

DID YOUR COMPANY MISS A DEADLINE?

- **Filings for Conversion Nongroup Health Plans**

Under Chapter 176M and 211 CMR 41.00, **carriers were required to submit rate and policy form filings for all guaranteed issue health plans to the Division by August 20, 1997.** Only twenty carriers submitted guaranteed issue health plan filings for the purposes of conversion nongroup health plans (a list of carriers who submitted such filings is attached to this bulletin). Based upon its knowledge of the market, the Division believes that more than twenty carriers offer conversion nongroup health plans in Massachusetts, and it is concerned that carriers offering conversion nongroup health plans do not understand the requirements of Chapter 176M and may not be in compliance with Chapter 176M and other applicable state law.

The Division has issued this bulletin to remind all carriers offering conversion nongroup health plans in Massachusetts that they must comply fully with the provisions of Chapter 176M. **Any carrier that currently has not complied with these filing requirements must submit all required rate and form filings to the Division *as soon as possible.*** Additionally, these carriers are requested to contact Mr. Kevin Beagan, Director of the Health Unit of the State Rating Bureau at the Division, in writing regarding the reason for the carrier's delay in submitting the filing and the date by which the carrier expects to submit its filings. Carriers should refer to 211 CMR 41.00 for detailed instructions regarding the content of these filings.

- **Filings for Closed Plans**

Under Chapter 176M and 211 CMR 41.00, carriers with closed plans were required to submit rate and policy form filings to the Division by August 20, 1997. The Division has received closed plan filings from sixteen carriers. However, based on its knowledge of the carriers that have written these products and have existing policies in the market, the Division believes that more carriers should have submitted closed plan filings.

Carriers that have closed plans in Massachusetts must submit the required rate and form filings *as soon as possible.* Additionally, these carriers are requested to contact Mr. Kevin Beagan, Director of the Health Unit of the State Rating Bureau at the Division, in writing regarding the reason for carrier's delay in submitting the filing and the date by which the carrier expects to submit its filings. Carriers should refer to 211 CMR 41.00 for detailed instructions regarding the content of these filings.

- **Review of Guaranteed Issue Health Plan Rate Filings and Determination of Average Adjusted Composite Rate**

Under Chapter 176M, section 5(b), the Commissioner is required to determine the average adjusted composite rate for each type of guaranteed issue health plan and whether the

adjusted composite rate filed by each carrier exceeds the average adjusted composite rate for that type of guaranteed issue health plan by more than two standard deviations. Under Chapter 176M, section 5(c), which applies to initial filings for newly offered guaranteed issue health plans, the Commissioner is required to notify a carrier whether its adjusted composite rate exceeds the average adjusted composite rate by more than two standard deviations and, therefore, the carrier is subject to further review under Chapter 176M, section 5(e). These tasks are to be completed no later than 45 days after carriers submit their guaranteed issue health plan rate filings.

As noted above, the guaranteed issue health plan filings were to be filed with the Division of Insurance by August 20, 1997. The Commissioner therefore had until October 4, 1997 to complete the above-noted tasks. However, in Bulletin No. 97-07, the Division informed carriers that it intended to complete these tasks by September 19, 1997, if carriers complied with the August 20 filing deadline.

Sometime prior to September 19, 1997, the Division became aware that it had not received all the required filings for guaranteed issue health plans due to the lack of such filings for conversion nongroup health plans. The Division requested that the Nongroup Health Insurance Advisory Board ("Board") provide it with guidance regarding whether the Division should proceed with the September 19 notification to those carriers that filed on a timely basis. The Board advised the Division (1) to not delay the rate review process due to a lack of guaranteed issue health plan filings for conversion nongroup health plans, (2) to base the determination of the average adjusted composite rate on the filings that were submitted to the Division in a timely manner, (3) to collect all the required filings from carriers for conversion nongroup health plans which were not filed on a timely basis, and (4) to review the adjusted composite rate contained in filings that were not made in a timely manner based on the average adjusted composite rate that was developed using the timely filings. A representative of the Office of the Attorney General appeared to concur with that guidance at a hearing held at the Division of Insurance on September 5, 1997 regarding 211 CMR 41.00.

The Division is proceeding in accordance with the guidance provided by the Nongroup Health Insurance Advisory Board.