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Bulletin No. 98-04

To: **Commercial Health Insurers, Blue Cross and Blue Shield of Massachusetts (BCBSMA), Health Maintenance Organizations**

From: **Linda Ruthardt, Commissioner**

Re: **Eligibility for Nongroup Guaranteed Issue Health Plans when a person is not or is no longer eligible for COBRA or small group continuation of coverage benefits.**

Date: **May 11, 1998**

This Bulletin addresses the issue of whether an individual must elect and exhaust the maximum period of coverage allowed by COBRA or the small group continuation of coverage law in order to meet one of the eligibility criteria under the Massachusetts Nongroup Health Insurance Law, G.L. c. 176M (Chapter 176M). Chapter 176M, § 1 requires individuals who wish to enroll in Nongroup Guaranteed Issue Health Plans to meet certain eligibility requirements enumerated in the definition of "Eligible individual."[1] The definition of an "Eligible individual" includes as a criterion an individual who "is not or is no longer eligible for" continuation benefits under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) or the small group continuation of coverage law found at G.L. c. 176J, § 9. For the purposes of this Bulletin, the aforementioned criterion will be referred to as the "continuation of coverage criterion". The Division of Insurance (Division) has reviewed whether an individual "is not or is no longer eligible" for COBRA or small group continuation of coverage benefits (and, therefore, eligible for a Nongroup Guaranteed Issue Health Plan under the continuation of coverage criterion) if: (1) an individual does not elect COBRA or small group continuation of coverage benefits offered to such individual or (2) an individual has elected COBRA or small group continuation of coverage benefits but does not exhaust the benefit.

Chapter 176M does not require an individual to elect and exhaust the maximum period of coverage allowed by COBRA or the small group continuation of coverage law in order to meet the continuation of coverage criterion for eligibility in a Nongroup Guaranteed Issue Health Plan.

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[1] The definition of "Eligible individual" being implemented under the Massachusetts individual market alternative mechanism pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) may be found in the Massachusetts submission to the Health Care Financing Administration for its alternative mechanism dated March 31, 1997. This document may be obtained from the Health Unit in the State Rating Bureau at the Division of Insurance at a cost of $25.00. Carriers should comply with this implementation in order to avoid administrative sanctions and penalties, including but not limited to those contained in G.L. c. 176D.

Instead, Chapter 176M focuses on the lack or loss of eligibility for COBRA or small group continuation of coverage benefits. Below are some examples of situations which would render an individual "not or no longer eligible" for small group continuation of coverage benefits and therefore, eligible under the continuation of coverage criterion to enroll in a Nongroup Guaranteed Issue Health Plan. The Division does not enforce or administer COBRA. [2] Therefore, it cannot opine on whether a particular individual "is not or no longer eligible" for COBRA benefits under federal law. However, please note that although differences in language between state and federal law may affect the analysis, the following examples appear to generally apply to COBRA benefits as well.

1. An individual is "not eligible" for small group continuation of coverage benefits if:

(a) the employee is terminated from employment due to gross misconduct.

(b) a health benefit plan is no longer being provided to other similarly situated employees on the same day that the qualifying event occurs.

(c) the employer group is comprised of only one eligible employee. The small group continuation of coverage provisions apply to small group health benefit plans with between 2 to 19 employees (*See,* G.L. c. 176J, § (k)(iii)).

(d) the group is a self-funded single employer health plan and has less than 20 employees. The small group continuation of coverage provisions do not apply to self-funded single employer health plans.

2. An individual is "no longer eligible" for small group continuation of coverage when:

(a) the individual fails to elect his/her small group continuation of coverage benefits during the election period and the election period expires. An individual does not lose eligibility for small group continuation of coverage benefits until the expiration of the election period, which is at least 60 days duration.

(b) the individual waives his/her right to small group continuation of coverage during the election period. If an individual waives his/her right to COBRA or small group continuation of coverage benefits, such individual is no longer eligible for COBRA or small group continuation of coverage benefits at the time of the waiver.

Revocation of Waiver: Please note, however, that if an individual revokes his/her waiver before the end of the applicable election period, then such individual is eligible for small group continuation of coverage benefits at the time the waiver is revoked. Upon revocation of the waiver, the person is eligible for small group continuation of coverage benefits and, therefore, not eligible to enroll in a Nongroup Guaranteed Issue Health Plan.

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[2] COBRA benefits generally apply to employer groups with twenty or more employees.

(c) the individual fails to pay the required premium within the applicable grace period (*i.e.*, 45 days for payments made after initial election, 30 days for payments made after initial payment or any longer time as may be specified by the health benefit plan) and the grace period has expired. If an individual fails to pay the required premium within the applicable grace period, the individual is no longer eligible for small group continuation of coverage benefits at the time the grace period expires.

(e) a health benefit plan is no longer being provided to other similarly situated employees during the continuation of coverage period.

(f) the individual exhausts the maximum time period allowed for continuation coverage under the small group continuation of coverage provisions.

(g) the individual is determined to be no longer disabled. For individuals who meet the requirements regarding disability found at G.L. c. 176J, § 9(b)(2)(v), the small group continuation of coverage benefits end on the month that begins more than thirty days after the date of a final determination under Title II or XVI of the Social Security Act that the individual is no longer disabled.

Questions regarding this Bulletin may be directed to Caroline E. DeStefano, Assistant General Counsel at (617) 521-7364 or the Health Unit in the State Rating Bureau at the Division of Insurance at (617) 521-7349.