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Bulletin No. 98-07

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

FROM: Commissioner Linda Ruthardt

RE: Medicare + Choice Plans

DATE: July 20, 1998

On April 17, 1998, the Division of Insurance (Division) issued Bulletin No. 98-03 regarding benefits in Medicare + Choice plans during 1999. As discussed in that bulletin, the Medicare + Choice program is established by Sections 1851 through 1859 of the federal Social Security Act, which were added by the federal Balanced Budget Act of 1997 (BBA 97), Pub. L. No. 105-33, § 4001.

On June 26, 1998, the federal Health Care Financing Administration (HCFA) published in the *Federal Register* an interim final rule entitled *Medicare Program; Establishment of the Medicare + Choice Program. See* 63 Fed. Reg. 34,968 (1998) (to be codified at 42 C.F.R. Parts 400, 403, 410, 411, 417 and 422). This interim final rule is effective July 27, 1998.

HCFA's interim final rule addresses a broad array of issues related to Medicare + Choice plans. The rule includes a discussion of the federal preemption of state law at 63 Fed. Reg. 35,012-13 and the related regulation 42 C.F.R. § 422.402. In particular, HCFA describes "general preemption" and "specific preemption" under BBA 97 for Medicare + Choice plans. According to HCFA, specific preemption applies to benefit requirements, requirements relating to inclusion or treatment of providers, and coverage determinations (including related appeals and grievance processes).

It is the position of the Division that, notwithstanding HCFA's interim final rule, and absent a judicial determination that any state law is preempted, state law will continue to apply to insured plans that are issued or renewed for people with Medicare by commercial insurers, HMOs and Blue Cross and Blue Shield of Massachusetts in the Commonwealth. The Division also notes that HCFA's interim final rule does not appear to contain any prohibition which would prevent carriers from complying with all applicable state laws.

Questions regarding this bulletin may be directed to Amy Novick, Office of the General Counsel, Division of Insurance at (617) 521-7317.

cc: Health Care Financing Administration