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Bulletin 98-18

To: Issuers Offering Medicare Supplement Insurance
HMOs Offering Medicare Managed Care Plans

From: Commissioner Linda Ruthardt

RE: Extension of Required Open Enrollment Period Scheduled in Bulletin 98-14
Extension of Required Open Enrollment Period Scheduled in Bulletin 98-16
Medigap Protections in Section 4031 of the Federal Balanced Budget Act of 1997

Date: November 23, 1998

- **Extension of Required Open Enrollment Period Scheduled in Bulletin 98-14**

In Division of Insurance (Division) Bulletin 98-14 (copy attached), a required open enrollment period was scheduled because the Division had been notified by the federal Health Care Financing Administration (HCFA) that HCFA's Health Care Prepayment Plan contract with Blue Cross and Blue Shield of Massachusetts, Inc. (BCBSMA), HCFA's cost contract with Harvard Pilgrim Health Care of New England, Inc. (HPHCNE) and HCFA's risk contract with Aetna U.S. Healthcare Inc. will no longer be in effect as of January 1, 1999. The open enrollment period was scheduled to be held for Medicare Supplement plans between October 1, 1998 and November 30, 1998 and for Medicare managed care plans between October 1, 1998 and November 16, 1998.

Due to delays in the plans receiving HCFA approval to inform members of these plans of all the information regarding their status and options for other coverage, the Division is extending this required open enrollment period through December 18, 1998 for Medicare Supplement Plans for coverage effective January 1, 1999 and through December 31, 1998 for Medicare managed care plans for coverage effective January 1, 1999, provided, however, that this required open enrollment period is extended through Monday, November 30, 1999 for January 1, 1999 coverage for the Community Health Plan cost contract plan only. The same people described in the third paragraph of Bulletin 98-14 are entitled to this extended open enrollment opportunity. (Please refer to the chart at the end of this bulletin for a summary of the change in ending dates.)

- **Extension of Required Open Enrollment Period Scheduled in Bulletin 98-16**

In Division Bulletin 98-16 (copy attached), a required open enrollment period was scheduled because the Division had been notified by HCFA that HCFA's Health Care Prepayment Plan contracts with Community Health Plan (CHP) and with Kaiser Foundation Health Plan of Massachusetts (Kaiser) will no longer be in effect as of January 1, 1999 for the purposes of individual/direct pay enrollment. The open enrollment period was scheduled to be held for Medicare Supplement plans between October 8, 1998 and December 7, 1998 and for Medicare managed care plans between October 8, 1998 and November 20, 1998.

Due to delays in the plans receiving HCFA approval to inform members of these plans of all the information regarding their status and options for other coverage, the Division is extending this required open enrollment period through December 18, 1998 for Medicare Supplement Plans for coverage effective January 1, 1999 and through December 31, 1998 for Medicare managed care plans for coverage effective January 1, 1999, provided, however, that this required open enrollment period is extended through Monday, November 30, 1999 for January 1, 1999 coverage for the Community Health Plan cost contract plan only. The same people described in the third paragraph of Bulletin 98-16 are entitled to this extended open enrollment opportunity. (Please refer to the chart at the end of this bulletin for a summary of the change in ending dates.)

- **Medigap Protections in Section 4031 of the Federal Balanced Budget Act of 1997**

Section 4031 of the federal Balanced Budget Act of 1997 (BBA 97) amended Section 1882(s) of the federal Social Security Act, which is codified at 42 U.S.C. 1395ss(s). Section 4031 of BBA 97 (Section 4031) contains certain Medigap protections for individuals under a variety of circumstances. The protections in Section 4031 relate to guaranteeing issue of Medigap coverage without preexisting conditions for continuously covered individuals and limitations on the imposition of preexisting condition exclusions during the initial open enrollment period (subsections (a) and (b) respectively). Subsection (d) of Section 4031 contains the effective dates for these provisions and Subsection (e) contains the transition provisions.

It is expected that HCFA will be issuing a notice in the *Federal Register* regarding the model regulation for these provisions. HCFA has also written to state insurance commissioners regarding the application of these provisions to people who are in Medicare managed care plans that will no longer be serving some or all of its Medicare beneficiaries as of January 1, 1999 (see attached letter). Please review this letter carefully for information regarding obligations of Medigap carriers to issue coverage under Section 4031. In addition, the following should be noted.

- HCFA states in its letter that the guarantee issue rights under Section 4031 are not required for those people who are enrolled in Medicare soley due to end-stage renal disease if a carrier is not already selling to those individuals.

- M.G.L. c. 176K § 3(a) prohibits Medigap issuers from discriminating in the pricing of a Medigap policy because of the "age, health status, claims experience, receipt of health care,

[or] medical condition of the eligible person...." M.G.L. c. 176K, § 3(b) prohibits Medigap issuers from having any waiting period or preexisting condition limitation or exclusion in their policies. Therefore, the Massachusetts regulatory program already contains general prohibitions on price discrimination and pre-existing condition provisions.

- 42 U.S.C. 1395ss(s)(C)(iv) states the following:

  For the purposes of applying this paragraph in the case of a State that provides for offering of benefit packages other than under the classification referred to in clause (i), the references to benefit packages in such clause are deemed references to comparable benefit packages offered in such State.

  42 U.S.C. 1395ss(s)(C)(i) refers to federal standard benefit packages A, B, C and F. As you know, Massachusetts received a waiver pursuant to 42 U.S.C. 1395ss(p)(6) from the federal standard benefit package requirements. As a result, Massachusetts has three standard benefit packages: Medicare Supplement Core, Medicare Supplement 1 and Medicare Supplement 2. It is the position of the Division of Insurance that comparable benefit packages under 42 U.S.C. 1395ss(s)(C)(iv) are both the Massachusetts Medicare Supplement Core and Medicare Supplement 1 plans. Because federal plans A, B, C and F do not contain an outpatient prescription drug benefit, it does not appear that Medicare Supplement 2 is comparable to those federal plans.

- It is the Division's understanding of Section 4031(e) that Massachusetts is expected to update its regulatory program by April 29, 1999 in order to be in compliance with the requirements of Section 4031. Although Massachusetts has not done such yet, it should be noted that an issuer's failure to provide coverage as required by Section 4031 will be reviewed by the Division for possible violations of M.G.L. c. 176D and any other applicable statutes and regulations. The attached letter from HCFA also notes that there are federal civil monetary penalties for failure to comply with these federal requirements. Please also note that, in the interim, the Division will not require Medigap issuers in Massachusetts to immediately update their policy forms in order to comply with Section 4031. These issuers will be contacted individually to discuss when policy form changes will be made. However, the Division expects issuers to adhere to these federal requirements in this interim period regardless of the language in the issuer's policy form.

- As noted in HCFA's letter, there are some Medicare managed care plans that will no longer be serving some or all of their current Medicare beneficiaries as of January 1, 1999. As a result, the individuals in those plans are entitled to the Medigap guarantee issue rights found in 42 U.S.C. 1395ss(s)(3)(B)(iii) and, possibly, also in 42 U.S.C. 1395ss(s)(3)(B)(v). It is the Division's understanding from HCFA that individuals covered under HCFA's cost contract with HPHCNE and risk contract with Aetna U.S. Healthcare Inc. (discussed above in regard to Bulletin No. 98-14) will be eligible for the guarantee issue rights in these provisions if all other requirements are met. It is also the Division's understanding that the 63 day period will run from January 1, 1999 through March 5, 1999 under 42 U.S.C. 1395ss(s)(3)(B)(iii) for the people in these two plans. Of course, in general, other individuals may be eligible for the guarantee issue rights in Section 4031 at any time, including 42 U.S.C. 1395ss(s)(3)(B)(v).

Any questions regarding this bulletin should be directed to Kevin Beagan, Director of the Health Unit of the State Rating Bureau at the Division of Insurance, at (617) 521-7347.

Summary of Ending Dates for Required Open Enrollment Periods Scheduled in Division Bulletins 98-14 and 98-16

Bulletin 98-14 Required Open Enrollment Periods

Applies To:

HMO Blue For Seniors--BCBSMA
CarePlus--HPHCNE
Medicare Premier, Medicare V and Medicare X--Aetna U.S. HealthCare

	Prior Ending Date:	New Ending Date:
Medicare Supplement Plans	November 30, 1998	December 18, 1998
Medicare HMO Plans (except Community Health Plan)	November 16, 1998	December 31, 1998
Community Health Plan	November 16, 1998	November 30, 1998

Bulletin 98-16 Required Open Enrollment Period

Applies To:

Medicare Plus--Community Health Plan
Medicare Plus--Kaiser Foundation Health Plan

	Prior Ending Date:	New Ending Date:
Medicare Supplement Plans	December 7, 1998	December 18, 1998
Medicare HMO Plans (except Community Health Plan)	November 20, 1998	December 31, 1998
Community Health Plan	November 20, 1998	November 30, 1998