COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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LINDA RUTHARDT
COMMISSIONER OF INSURANCE

Bulletin 2002-03

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

From: **Commissioner Linda Ruthardt**

Re: **Portability of Health Coverage Underwritten by an Unlicensed Insurance Carrier**

Date: **January 24, 2002**

The Massachusetts Division of Insurance ("Division") has been made aware that a company known as Employers Mutual LLC, a Nevada company that is not licensed as an insurer in Massachusetts (or in any other state), has sold purported health coverage in the Commonwealth. The U.S. Department of Labor has obtained a temporary restraining order freezing assets.

Under the provisions of M.G.L. c. 176M ("Nongroup Health Insurance"), M.G.L. c. 176J ("Small Group Health Insurance") and M.G.L. c. 176N ("Portability" for all other health insurance plans), carriers are permitted to impose no more than a 6-month pre-existing condition period. It is also required, however, that carriers give credit toward the pre-existing condition period for any qualifying coverage held prior to the new coverage as long as the gap between the old and new coverage is not greater than the statutory period. The Division is issuing this bulletin to provide guidance regarding the "portability" of the coverage written by entities (such as Employers Mutual LLC), which are alleged to have operated illegally.

It is the Division's position that a Massachusetts resident's coverage underwritten by an unlicensed company in contravention of the applicable Massachusetts licensing statutes and/or applicable federal law may constitute qualifying coverage for the purposes of achieving "portability" under the statutory provisions of M.G.L. c. 176M ("Nongroup Health Insurance"), M.G.L. c. 176J ("Small Group Health Insurance") and M.G.L. c. 176N and may qualify for credit toward any pre-existing condition limitations. To do otherwise would act to illogically penalize those who may be victims.

Carriers should not insist on documents that one would regularly expect to be available when coverage was with a legally operating entity. Nevertheless, consistency in a carrier's approach to applicants is important. However, if a carrier obtains clear evidence of an applicant's having knowingly participated in the alleged misrepresentation or fraud, then the carrier has no obligation to credit qualifying coverage and is asked to contact the Division of Insurance.

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