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DIVISION OF INSURANCE

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Bulletin 2002-05

To: **Commercial Health Insurers, Blue Cross and Blue Shield of Massachusetts, and Health Maintenance Organizations accredited pursuant to M.G.L. c. 176O**

From: **Commissioner Howard K. Koh, Department of Public Health and** H K Koh MD MPH

Commissioner Linda Ruthardt, Division of Insurance Linda Ruthardt

Re: **Valid waivers under 105 CMR 128.000**

Date: **January 24, 2002**

The Bureau of Managed Care in the Division of Insurance (Division) and the Office of Patient Protection in the Department of Public Health (DPH) publish this bulletin jointly consistent with the obligations of each agency imposed by M.G.L. c. 176O (Chapter 176O). The purpose of this bulletin is to clarify the procedures carriers must follow when asking insureds to agree to waive or extend time limits regarding appeals and grievances.

As noted in Bulletin No. 2001-10, many of the time requirements for internal appeals and grievances set forth in 105 CMR 128.000 can be waived or extended by "mutual written agreement of the insured or the insured's authorized representative and the carrier." See, e.g., 105 CMR 128.302(A); 105 CMR 128.304; 105 CMR 128.305(D). "Mutual written agreement" means an agreement signed by both parties. Because any such agreement results in the waiver of rights granted to insureds, the agreement must contain specific information that ensures that the insured is fully aware of his or her rights and the consequences of waiving those rights.

In order for a waiver to be considered valid by the Division and DPH, it must contain at a minimum:

- an explanation of the specific rights under Massachusetts law that are being waived;
- the reason for the time limits to be extended;
- the date by which the signed waiver must be received by the health plan;
- the date by which a decision will be rendered (which in no circumstances should exceed an additional 30 business days); and
- the process by which the carrier will resolve the grievance and the rights available to the insured if he or she decides not to sign the waiver.

Use of a waiver that does not conform to the above requirements will be considered a violation of M.G.L. c. 176O subject to investigation by Division for noncompliance with accreditation standards pursuant to 211 CMR 52.17(2).

If you have questions about this bulletin, or would like to submit a draft waiver to be reviewed for compliance, please contact the Office of Patient Protection at DPH at (617) 624-5278 or the Bureau of Managed Care at the Division at (617) 521-7372.