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

One South Station • Boston, MA 02110-2208
(617) 521-7794 • FAX (617) 521-7750
TTY/TDD (617) 521-7490
http://www.state.ma.us/doi

JANE SWIFT
GOVERNOR

JENNIFER DAVIS CAREY
DIRECTOR, CONSUMER AFFAIRS
AND BUSINESS REGULATION

JULIANNE M. BOWLER
COMMISSIONER OF INSURANCE

Bulletin 2002-11

To: All Individuals / Corporations Licensed to Sell Health Insurance in Massachusetts

From: Julianne M. Bowler, Commissioner of Insurance

Date: June 24, 2002

Re: Solicitation and Sale of Unapproved Health Insurance in Massachusetts

This Bulletin is to remind individuals and corporations licensed to sell health insurance in Massachusetts of the potential consequences that they face if they market and/or sell products by organizations not properly licensed to transact business in the Commonwealth of Massachusetts.

In recent months, the Division of Insurance ("Division") has become aware that certain Massachusetts licensed health insurance agents and brokers have been involved in the marketing and sale of so-called "health plans" offered by entities not licensed to conduct insurance business in Massachusetts. Among the common characteristics these organizations may share:

- **Offer coverage exclusively through professional associations, guilds, unions or trusts;**
- Avoid the use of the word "insurance" and insurance terminology in sales and marketing literature, or may claim that the plan is exempt from regulation because it is not insurance;
- Claim that they are employer-sponsored plans exempt from state licensing and regulation by the federal Employee Retirement Income Security Act (ERISA) of 1974;
- Recruit licensed insurance agents and brokers to sell their health plan.

As you may be aware, legitimate self-funded ERISA plans offered by employers /unions are subject to United States Department of Labor provisions, and individual agents or brokers do not generally sell such plans. Massachusetts licensees must actively seek to determine the legitimacy of the health insurance plans that they offer for sale before they undertake the marketing of such plans. The marketing of unauthorized health insurance plans is currently the subject of regulatory scrutiny in Massachusetts and other states. In some cases, these unauthorized plans have left consumers with thousands of dollars worth of unpaid claims.

Massachusetts licensees have a professional and legal responsibility to ensure that the health plans they market are underwritten by properly licensed entities. The Division will exercise all available authority to hold licensees accountable for their actions in marketing and selling unapproved health plans. This includes, but is not limited to, license suspension or revocation and monetary penalties. Agents and brokers may also be held personally liable for the unpaid claims of those consumers to whom they market or sell unauthorized health plans.

Small Employer Group Requirements

Please be aware that the statute for small group health insurance plans applies to all health benefit plans offered to eligible small groups having from one to fifty eligible employees, including self-employed individuals. Carriers operating in this market are required to offer all products made available to any eligible small group on a guarantee issue basis, according to the eligibility, rating and other standards identified in M.G.L. Chapter 176J and 211 CMR 66.00, the statute and regulation governing small group health insurance plans.

Non-Group (Individual) Requirements

"Any health plan issued, renewed or delivered within or without the Commonwealth to a natural person who is a resident of the Commonwealth, including a certificate issued to an eligible natural person which evidences coverage under a policy or contract issued to a trust or association" is included in the definition of a non-group health insurance plan and is subject to the provisions of the non-group law. Although there are certain accident and sickness products, for example long term care insurance or disability income insurance that are exempt from the law, almost all health insurance products are subject to the provisions of this law.

Reference Material

The Division maintains lists of each approved non-group and small group health insurance product on its website. For more information regarding available individual or small group health coverage, or to check if a company is licensed to sell health insurance in the Commonwealth, please consult the Division's website (www.state.ma.us/doi/Consumer/CSS_health.html) for approved products, or (www.state.ma.us/doi/companies/companies_lists.html) for licensed companies. You may also contact the Division's Consumer Help Line at (617) 521-7777. You may also contact the United States Department of Labor directly to determine if a health plan is approved.