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2004-02 New Solvency Obligations for HMOs Pursuant to Sections 34-46 and 83 of Chapter 141 of the Acts of 2003

TO: **Health Maintenance Organizations (HMOs)**

FROM: **Julianne M. Bowler, Commissioner of Insurance** Julianne M Bowler

DATE: **January 30, 2004**

RE: **Obligations of HMOs regarding Solvency Requirements for Health Maintenance Organizations pursuant to Sections 34-46 and 83 of St. 2003, c. 141.**

The purpose of this Bulletin is to inform Health Maintenance Organizations (HMOs) of the enactment of sections 34-46 and 83 of St. 2003, c. 141 (Chapter 141). In addition to solvency requirements, minimum net worth and deposit requirements for HMOs, this HMO Solvency legislation establishes other financial stability requirements. The law became effective on **January 1, 2004**. HMOs should be particularly mindful of certain new requirements with deadlines in the coming year, as described below.

- Each HMO will have to maintain a deposit with a trustee to be used exclusively to protect the interests of policyholders, enrolled members, and the general public and which at all times shall have a value of not less than $1,000,000. The commissioner has determined that deposits under Chapter 141 shall be maintained with the Massachusetts State Treasury.
    - Not later than **July 1, 2004**, each HMO shall provide evidence of and maintain a deposit in the amount of $500,000 to constitute the first half of the required $1,000,000 deposit.
    - Not later than **January 1, 2005**, the HMO shall provide evidence of and maintain a deposit in the amount of an additional $500,000 to constitute the rest of the required $1,000,000 deposit.

- Each HMO will have to maintain a minimum adjusted net worth. The law permits an HMO to incrementally meet the minimum adjusted net worth by increasing the percentage of the minimum required amount annually over six years until the minimum has been met. By **December 31, 2004**, each HMO will be required to maintain 10% of the minimum adjusted net worth. Thereafter, the increases will be as follows:
    - 25 per cent of the minimum adjusted net worth required, by December 31, 2005;
    - 40 per cent of the required amount by December 31, 2006;
    - 55 per cent of the required amount by December 31, 2007;
    - 70 per cent of the required amount by December 31, 2008;
    - 85 per cent of the required amount by December 31, 2009; and
    - 100 per cent of the required amount by December 31, 2010.

- Chapter 141 provides for a statutory filing date of **March 1** every year for an HMO in Massachusetts to file its annual financial statement. The annual statement must be maintained and prepared in accordance with statutory accounting practices and procedures now, rather than the formerly required generally accepted accounting practice. The annual statement also must be maintained and prepared in accordance with the Annual Statement Instructions and Accounting Practices and Procedures Manual adopted by the National Association of Insurance Commissioners (NAIC). In addition, the commissioner will now be required to examine the affairs of an HMO at least every five (5) years rather than the previously required two (2) years, although, as before, examinations may take place more often, at the discretion of the commissioner.

- Each HMO that is part of a holding company system must file a detailed registration statement with the Division. The registration form must be filed within 180 days of the effective date of Chapter 141 (by **June 28, 2004**), or within 15 days of becoming subject to the registration requirement by becoming part of an HMO holding company system. The new registration requirements are comparable to the current registration statement filing provisions applicable to insurers pursuant to M.G.L. c. 175, § 206C and 211 CMR 7.11, including a requirement that a domestic HMO must notify the commissioner of any intent to pay an extraordinary dividend or extraordinary distribution, which is subject to her approval.

- With respect to HMO licensure, each HMO no longer needs to file a copy of its license application with the Office of Patient Protection within the Department of Public Health, but this change does not eliminate any other obligations that an HMO has to file materials with that agency under M.G.L. c. 176O. Also, each HMO will now be required to notify the Division annually of any material change in any of the materials that the HMO has submitted in its license application. As such, each annual renewal application shall include notice of any material changes.

- Mergers, acquisitions, and inter- and intra- company transactions that involve an HMO organization are now required to comply with corporate transaction provisions under Chapter 141. The Division must review and approve proposed corporate transactions that involve HMO organizational structures.

- Chapter 141 has also added provisions for administrative supervision, rehabilitation and liquidation proceedings, as well as provisions for license revocation or suspension in the event that any HMO becomes financially distressed. License suspension and revocation provisions will apply to both domestic and foreign HMOs.

The Division intends to promulgate regulations pursuant to Chapter 141, mainly with respect to the timing of HMO application renewals, notices of material changes, corporate transaction standards and HMO holding company system registrations. In the interim, the Division will enforce the provisions of Chapter 141. Accordingly, companies are reminded that they are expected to understand and comply with the statute. The unofficial version of the text of sections 34 through 46 and 83 of Chapter 141 can be viewed on the state Internet website at: http://www.state.ma.us/legis/laws/seslaw03/sl030141.htm

If you have any questions regarding this bulletin or in determining how your company can comply with the Massachusetts HMO Solvency law, please contact Abigail Morgan at the Office of the General Counsel at 617-521-7309.