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Bulletin 2007-01

TO: **Insurers Offering Insured Health Products in Massachusetts, Blue Cross and Blue Shield of Massachusetts and Health Maintenance Organizations**

FROM: **Joseph G. Murphy, Acting Commissioner of Insurance**

DATE: **January 18, 2007**

RE: **Amendments Created by Chapters 58 of the Acts of 2006, as amended, Related to Eligibility as a Dependent in an Insured Health Plan**

The purpose of this bulletin is to clarify the new dependent coverage requirements implemented under the Health Care Reform Act.

Effective January 1, 2007, the Health Care Reform Act (Chapter 58 of the Acts of 2006, as amended) requires that carriers with insured health benefit plans that provide for dependent coverage make coverage available for persons through the earlier of their 26th birthday or the day two (2) years following the loss of their dependent status according to federal tax rules.

This requirement applies to all insured health plans offered by commercial insurance companies, Blue Cross and Blue Shield of Massachusetts (BCBSMA), and Health Maintenance Organizations, except for stand-alone dental products and Medicare Supplement plans. Insured health plans that provide or arrange for the delivery of health care services through a defined network of providers would be permitted, however, to restrict coverage to those persons, including dependents, who maintain residence within the plan service area.

As of January 1, 2007, carriers may not impose any limitations on eligibility for dependent coverage, other than limitations defining familial relationships under the policy (e.g., spouse and children, or spouse, children and parents) and any other limitations that may be permitted under the statute.

Determination of Loss of Dependent Status

To qualify as a dependent under an insured health plan, an individual must have satisfied the Internal Revenue Code criteria for dependent status and must have been claimed as a dependent on: (1) a subscriber's federal income tax form, or (2) in the case of divorced/separated spouses who have had joint custody over a child, or married couples who file separate federal income tax returns, either spouses' or ex-spouses' federal income tax return as permitted by federal tax rules.

For the purpose of determining the date of a person's "loss of dependent status", the Division will follow the Internal Revenue Code's calendar year designation (i.e., January 1 through December 31). The date on which a person loses dependent status is December 31 of the last federal tax year for which said person was claimed as a dependent on another person's federal income tax form.

Carriers are required to continue dependent coverage until December 31, two years following the date of "loss of dependent status", for those persons under 26 years of age.

The following scenarios are provided to help illustrate the effect of these new provisions:

Scenario 1

As an example, consider the case of a 22-year old who has been a dependent of her parents, gets a job, and moves out of her parents' home on November 1, 2006. When her parents complete their tax return in 2007 for tax year 2006, they will continue to declare her as a dependent provided that she satisfied the Internal Revenue Code's qualifications as a dependent for 2006. If she continues to live away from home, paying more than half of her living expenses for tax year 2007, when her parents complete their tax return for tax year 2007 in 2008, they will not be able to declare her as a dependent for tax year 2007. She, therefore, will have lost her "dependent status" on December 31, 2006, the day before the year in which she cannot be considered as a "dependent" under her parents' federal tax return. This would mean that she would be eligible to continue as a dependent under her parents' health insurance through December 31, 2008 – two years after the December 31, 2006 loss of dependent status.

Scenario 2

The 22-year old who moved out on November 1, 2006 in Scenario 1, subsequently moves back home on June 15, 2007 and her parents pay for more than half of her living expenses for tax year 2007. When her parents complete their tax return for tax year 2007 in 2008, they will continue to declare her as a dependent for tax year 2007. She, therefore, will not have lost her "dependent status" despite the fact that she may have

lived on her own from November 1, 2006 through June 15, 2007 because her parents declared her as a dependent on their 2007 tax return forms.

Scenario 3

The 22-year old who moved out on November 1, 2006 in Scenario 1, subsequently moves back home on January 1, 2008 and her parents pay for more than half of her living expenses for tax year 2008. Her parents will again claim her as a dependent on their 2008 federal income tax form. When her parents complete their tax return for tax year 2007 in 2008, they will not declare her as a dependent for tax year 2007 since she did not meet the "dependent status" under federal tax law. This would mean that she lost her "dependent status" on December 31, 2006 and then would only be eligible to continue dependent coverage until December 31, 2008, or two years following the loss of dependent status. In this case, however, as the daughter moves back home on January 1, 2008, prior to the expiration of the "two year period following loss of dependent status" and she requalifies as a dependent for tax year 2008 when her parents complete their tax forms in 2009, she then will continue as a "dependent" under her parents' coverage without interruption until the earlier of her 26th birthday or two years following the next loss of dependent status.

Scenario 4

The 22-year old who moved out on November 1, 2006 in Scenario 1, had a child in November 2007 and subsequently moves back home on January 1, 2008 with her parents who pay for more than half of her living expenses in tax year 2008. As noted above, since the daughter moves back home prior to the expiration of the two-year period following loss of dependent status, she then will continue as a "dependent" under her parents' coverage without interruption until the earlier of her 26th birthday or two years following the next loss of dependent status. Regarding the child born in November 2007, under other insurance statutes, carriers are required to cover the newborn child of a dependent. Since the daughter is a dependent under the plan, the newborn child would also qualify as a dependent under the plan for as long as the dependent daughter is eligible for dependent coverage. Therefore, once the daughter loses dependent status, the grandchild is no longer eligible for dependent status under the grandparents' plan. Unless grandchildren are normally considered eligible dependents under the plan, independent of their parents, the two year rule does not apply to the grandchild in this case.

Enrollment Period

All carriers offering insured health plans with dependent coverage shall consider January 1, 2007 as a qualifying event and shall provide persons who become newly eligible for dependent coverage on January 1, 2007, under M.G.L. c. 175, § 108(2)(a)(3); M.G.L. c. 175, § 110(P); M.G.L. c. 176A, § 8Z; M.G.L. c. 176B, § 4Z; and M.G.L. c. 176G, § 4R, a reasonable initial eligibility enrollment period. Following the expiration of such an initial eligibility period, carriers are required to offer such eligible persons coverage during open enrollment periods or upon a qualifying event in the same manner that all other eligible dependents are offered such coverage.

Carriers subject to M.G.L. c. 176O and 211 CMR 52.00, or M.G.L. c. 175 § 108, should forward to the Division any changes to evidences of coverage on file with the Division to reflect changes to sections addressing eligibility as a dependent to comply with those statutory provisions as implemented by Chapters 58.

Eligibility for Continuation Coverage

Under federal law for employers with 20 or more employees and under M.G.L. c. 176J, § 9 for employer groups with between 2 and 19 employees, a dependent child is considered to have had a "qualifying event" eligible for continuation coverage under an employer's plan as of the date that the "dependent child ceas[es] to be a dependent child under the generally applicable requirements of the health benefit plan." For the purposes of rights to continue coverage as a dependent, the date of the qualifying event will be the earlier of the 26th birthday or the date two years after the loss of dependent status. If a 22-year old child loses her dependent status under federal tax rules as of December 31, 2006 and continues to not qualify as a dependent on her parents' tax return forms, her qualifying event date for purposes of COBRA or mini-COBRA would be December 31, 2008, the last day she would be guaranteed eligible under her parent's insured health coverage.

If there are any questions regarding this bulletin, please contact Nancy Schwartz, Director of the Bureau of Managed Care at (617) 521-7347 or Kevin Beagan, Director of the State Rating Bureau at (617) 521-7323.