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## Bulletin 2007-04

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

**FROM:** **Nonnie S. Burnes, Commissioner of Insurance**

**DATE:** **April 11, 2007**

**RE:** **Non-discriminatory Offer and Equal Contribution by Employers of Insured Group Health Benefit Plan Contracts Pursuant to Chapter 58 of the Acts of 2006, as amended**

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This bulletin is intended to summarize and clarify certain provisions related to the non-discriminatory offer and equal contribution by employers of insured group health benefit plan contracts as required by the enactment of Chapter 58 of the Acts of 2006, "An Act Providing Access to Affordable, Quality, Accountable Health Care" (the "Act"), as amended by Chapter 324 of the Acts of 2006 and Chapter 450 of the Acts of 2006. Carriers are to be in compliance with the relevant statutory requirements of M.G.L. c. 175, § 110(O); c. 176A, § 81/2; c. 176B, § 3B; and c. 176G, § 6A; by July 1, 2007, in accordance with the Act.

Collectively, these provisions require that, beginning July 1, 2007, a health carrier is only permitted to enter into an insured group health benefit plan contract with an employer if:

(1) the employer offers the health benefit plan to all of its full-time employees living in Massachusetts; and
(2) the employer does not make a smaller premium contribution percentage to a full-time employee living in Massachusetts than the employer makes to any other full-time employee living in Massachusetts who receives an equal or greater total hourly or annual salary for each specific or general blanket insured group health benefit plan contract. It is noted that this provision does not apply for an employer that establishes separate contribution percentages for employees covered by collective bargaining agreements.

The Division of Insurance would consider the following permissible for health carriers meeting the above referenced statutory requirements:

1. A health carrier can only enter into an insured group health benefit plan contract with an employer that offers that same insured group health benefit plan to all of such employer's full-time employees living in Massachusetts in the health plan's approved service area. Employers are not required to offer the insured group health benefit plan contract to retirees, part-time, temporary or seasonal employees. For purposes of these requirements, the terms "full-time employee" and "part-time, temporary or seasonal employee" will be consistent with provisions within regulations promulgated by the Division of Health Care Finance and Policy (DHCFP) regarding the so-called "employer fair share contribution." Consistent with the DHCFP standards, the Division of Insurance considers that a full-time employee is an employee who is scheduled or expected to work at least the equivalent of an average of 35 hours per week over the applicable base period and who is not a temporary employee (expected to work 12 consecutive weeks or fewer) or a seasonal employee (as so recognized by the Department of Unemployment Assistance).

2. A health carrier can only enter into an insured group health benefit plan contract with an employer that does not discriminate against lower paid full-time employees living in Massachusetts in establishing contribution percentage amounts when contracting for the purchase of an insured group health benefit plan contract for its full-time employees living in Massachusetts. The Division of Insurance considers the following to satisfy the statutory requirements of M.G.L. c. 175, § 110(O); c. 176A, § 81/2; c. 176B, § 3B; and c. 176G, § 6A:

    a. Employers that establish a fixed dollar amount contribution to premium regardless of salary for all full-time employees living in Massachusetts;
    b. Employers that establish different percentage contributions or fixed dollar contributions for different plan choices, whether fully insured or self-funded, as long as the contributions made with respect to each plan on behalf of full-time employees living in Massachusetts do not differ based on the salary level of the full-time employees living in Massachusetts;
    c. Employers that establish greater contribution levels for increasing lengths of service, as long as the schedule of contribution levels is part of a formal employee benefit plan and is designed as a reward for longevity rather than as a pretext for providing better health insurance contributions to more highly paid employees;
    d. Employers that establish greater contributions levels for employees who participate in company-sponsored health and wellness programs would be considered to satisfy the statutory requirements; and
    e. Employers that establish contribution levels for dependents of covered full-time employees living in Massachusetts that differ from the contribution levels for full-time employees would be considered to satisfy the statutory requirements provided that the contribution level is the same for all

dependents of said full-time employees living in Massachusetts and does not differ based on the salary level of the corresponding full-time employees.

3. A health carrier offering insured group health benefit plans through the Connector may rely on the Connector or any of its contracted sub-connectors to verify that employers whose employees are purchasing coverage through the Connector are in compliance with the noted statutory requirements.

4. The carrier's obligation regarding contracting with qualified employers applies at the time the insured health benefit contract is (1) entered into or (2) renewed. A health carrier is not responsible for actively monitoring whether employers' practices change during a contract period.

5. The requirements of this section apply to all insured group health benefit plan contracts that health carriers may enter into with employers on or after July 1, 2007. Any contracts that health carriers enter into prior to July 1, 2007 that go into effect on or after that date are not subject to these provisions.

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.