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DIVISION OF INSURANCE

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Bulletin 2008-01

TO: **Commercial Health Insurers, Blue Cross and Blue Shield of Massachusetts, Inc., and Health Maintenance Organizations Offering or Renewing Insured Health Products in Massachusetts**

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

DATE: **January 15, 2008**

RE: **Amendments Created by Chapter 205 of the Acts of 2007 Related to Eligibility as a Dependent in an Insured Health Plan**

Chapter 205 of the Acts of 2007 provided additional technical corrections to the Health Care Reform Act, Chapter 58 of the Acts of 2006. The purpose of this bulletin is to inform all commercial health insurers, Blue Cross and Blue Shield of Massachusetts, Inc., and Health Maintenance Organizations (collectively "carriers") of the new provisions related to eligibility as a dependent in an insured health plan. The Division of Insurance ("Division") issues this Bulletin 2008-01 to replace, effective of January 1, 2008, the Division's prior Bulletin 2007-01.[1]

Qualified Dependent

Effective January 1, 2008, carriers with insured health plans, except for stand-alone dental products and Medicare Supplement plans, that provide for dependent coverage must make coverage available for persons "under 26 years of age or for two (2) years **after the end of the calendar year in which such persons last qualified as dependents under 26 U.S.C. 106**,

[1] The Division's prior Bulletin 2007-01, *Amendments Created by Chapters 58 of the Acts of 2006, as amended, Related to Eligibility as a Dependent in an Insured Health Plan*, informed carriers that, effective January 1, 2007, carriers with insured health plans that provide for dependent coverage must make coverage available for persons "under 26 years of age or for 2 years following loss of dependent status under the Internal Revenue Code, whichever occurs first".

whichever occurs first."[2] The reference to 26 U.S.C 106 is section 106 of the Internal Revenue Code ("IRC"). An individual is considered a dependent for purposes of dependent coverage under an insured health plan if the individual qualifies as a dependent under section 106 of the IRC.[3]

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. 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. Any child of divorced parents who meets the expanded definition of dependent in connection with one parent is treated as a dependent of both parents.

Enrollment 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 Chapter 205 of the Acts of 2007.

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 purpose of the right to continue coverage as a dependent, the date of the qualifying event will be the earlier of the child's 26th birthday or the date two years after the end of the calendar year in which such person last qualified as a dependent under 26 U.S.C. 106, whichever occurs first. If a 22-year old child last qualified as a dependent under IRC 106 on December 31, 2008, her qualifying event date for purposes of COBRA or mini-COBRA would be December 31, 2010, the last day she would be guaranteed eligible under her parent's insured health coverage.

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[2] See M.G.L. c. 175, § 108(2)(a)(3); M.G.L. c. 175, § 110(P); M.G.L. c. 176A, § 8BB; M.G.L. c.176B, § 4BB; and M.G.L. c. 176G, § 4T.

[3] Section 106 of the IRC defines "dependent" for purposes of the exclusion from gross income for employer-provided health insurance benefits and is broader than the definition under section 152 of the IRC for purposes of claiming the dependency exemption for the child on the parent's federal income tax return. Therefore, an individual may qualify as a dependent for purposes of the exclusion from gross income for employer-provided health insurance benefits regardless of whether the parent actually claims the dependency exemption for the child on the parent's federal income tax return.

If there are any questions regarding this bulletin, please contact the Division of Insurance at (617) 521-7794.

Any questions regarding the tax implications of the dependent coverage requirements may be directed to the Department of Revenue at (617) 626-3250. Also, please refer to the Department of Revenue's Technical Information Release 07-16, which can be viewed on its website at www.mass.gov/dor, and to the Internal Revenue Service Notice 2004-79.