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Bulletin No. 95-12

To: **Blue Cross and Blue Shield of Massachusetts (BCBSMA), Commercial Health Insurers, and Health Maintenance Organizations (HMO's)**

From: Commissioner Linda Ruthardt Jim Ruthardt

RE: **M.G.L. c. 176D, § 3B**

Date: **December 1, 1995**

This bulletin is intended to clarify the Division's position on M.G.L. c. 176D, § 3B added by St. 1994, c. 60, § 148, the so-called "Pharmacy Freedom of Choice-Any Willing Provider" statute.

M.G.L. c. 176D, § 3B requires that a carrier, as defined by the statute, which offers insureds a restricted pharmacy network shall, in soliciting, arranging, competitively bidding and contracting for such a network, comply with certain competitive bidding requirements for the purpose of promoting fair and competitive bidding. It is the Division's determination that the statute is intended to require a competitive bidding process be used in any instance in which a carrier provides (including where it continues to provide) pharmaceutical drug benefits to insureds, which under the terms of a carrier's policy, certificate, contract or agreement of insurance or coverage either requires an insured or creates a financial incentive for an insured to obtain prescription drug benefits from one or more participating pharmacies that have entered into a contractual relationship with the carrier.

The Division reminds carriers that non-network retail pharmacies, which are not offered or not participating in a carrier's restricted pharmacy network contract, have the right to provide drug benefits to a carrier's insureds if the non-network pharmacies reach certain agreements with the carrier as set forth in the statute.

The only exception to the competitive bidding process requirement referred to in paragraph two is in a situation where a carrier has an "open" network in which any pharmacy that wishes to contract with the carrier to provide prescription drug benefits may do so.