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BULLETIN 2010-10

To: All Health Insurance Carriers Doing Business in the Commonwealth, including Commercial Health Insurance Companies, Blue Cross and Blue Shield of Massachusetts, Inc. and Health Maintenance Organizations

From: Joseph G. Murphy, Commissioner of Insurance

Date: October 6, 2010

Re: Amendments to M.G.L. c. 176D Pursuant to Chapter 288 of the Acts of 2010

This Bulletin highlights amendments to the Unfair Trade Practices Law, Massachusetts General Laws Chapter 176D, made effective pursuant to Sections 18 and 19 of Chapter 288 of the Acts of 2010 (the "Act"). These amendments are effective on October 1, 2010 and expand upon prohibited unfair methods of competition or unfair or deceptive acts or practices in the business of insurance.

Section 18 of the Act amends M.G.L. c. 176D, § 3(4) to define prohibited "boycott, coercion and intimidation" as:

> (a) entering into an agreement to commit, or by concerted action committing, an act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance; (b) a[] [sic] refusal by a nonprofit hospital service corporation, medical service corporation, insurance or health maintenance organization to negotiate, contract or affiliate with a health care facility or provider because of such facility's or provider's contracts, type of provider licensure or affiliations with any other nonprofit hospital service corporation, medical service corporation, insurance company or health maintenance organization; or (c) a[] [sic] nonprofit hospital service corporation, medical service corporation, insurance company or health maintenance organization establishing the price to be paid to any health care facility or provider by reference to the price paid, or the average of

> prices paid, to such facility or provider under a contract or contracts with any other nonprofit hospital service corporation, medical service corporation, insurance company, health maintenance organization or preferred provider arrangement.

Section 19 of the Act amends M.G.L. c. 176D, § 3A to prohibit entities governed by M.G.L. c. 175, 176A, 176B, 176G, 176I from:

> (i) entering into any agreement to commit or by any concerted action committing any act of, boycott, coercion, intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance; (ii) refusal to enter into a contract with a health care facility on the basis of the facility's religious affiliation; (iii) seeking to set the price to be paid to any health care facility or provider by reference to the price paid, or the average of prices paid, to that health care facility or provider under a contract or contracts with any other nonprofit hospital service corporation, medical service corporation, insurance company, health maintenance organization or preferred provider arrangement; (iv) refusal to contract or affiliate with a health care facility solely because the facility does not provide a specific service or range of services; (v) selecting or contracting with a health care facility or provider not based primarily on cost, availability and quality of covered services; (vi) refusal to enter into a contract with a health care facility solely on the basis of the facility's governmental affiliation; and (vii) arranging for an individual employee to apply for individual health insurance coverage, as defined in chapter 176J, for the purpose of separating that employee from group health insurance coverage to reduce costs for an employer sponsored health plan provided in connection with the employee's employment.

These new provisions, in part, amend M.G.L. c. 176D to prohibit health insurance carriers from refusing to negotiate, contract or affiliate with a health care facility or provider because of the type of license of that facility or provider. They also prohibit a health insurance carrier from establishing the prices it pays health care facilities or providers by reference to the prices paid to that facility or provider by any other carrier. Health insurance carriers must select or contract with health care facilities or providers based primarily on cost, availability and quality of covered services.

Notably, these new provisions also explicitly prohibit any entity from arranging for an individual employee to apply for individual health insurance coverage and then excluding that employee from coverage in an employer-sponsored health benefit plan for which they are otherwise eligible, in order to reduce costs for the employer-sponsored health plan.

Violations of these amended provisions of M.G.L. c. 176D, on and after October 1, 2010, constitute unfair methods of competition and unfair or deceptive acts or practices in the business of insurance and may result in the institution of enforcement proceedings against health

insurance carriers engaging in such prohibited activities. The Division encourages all health insurance carriers to familiarize themselves, and to comply, with these new requirements on a timely basis.

Carriers that have in force contracts with provisions not consistent with the amendments to M.G.L. c. 176D, §§ 3(4) or 3A must bring those contracts into conformity with the new requirements by the *earlier* of October 1, 2011 or the contract's renewal date. In the case of contracts with "evergreen" clauses, the Division considers the date by which such a contract will automatically renew to be the contract renewal date. The Division further reminds all health insurance carriers that contract revisions, including those made in order to comply with these new requirements, may impact a carrier's accreditation and are subject to disclosure requirements pursuant to M.G.L. c. 176O and 211 CMR 52.06.