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Bulletin 2010-13

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

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

DATE: **December 1, 2010**

RE: **Open Enrollment for Individuals**

Background

The Division of Insurance ("Division") issues this Bulletin to highlight amendments to Massachusetts General Laws Chapter 176J, made pursuant to Chapter 288 of the Acts of 2010 ("Chapter 288"). Chapter 288 creates a new mandatory open enrollment structure for individuals seeking coverage in the small group-individual market ("merged market"), effective December 1, 2010. As of December 1, 2010, eligible individuals who do not meet the standards for immediate enrollment into individual coverage in a merged market health plan will be able to apply for and purchase coverage only during the following open enrollment time periods:

2011: January 1-February 15 and July 1-August 15

2012 and thereafter: July 1-August 15

Eligible Individual

Chapter 288 and M.G.L. c. 176J, § 1 define an eligible individual as a Massachusetts resident who is not seeking individual coverage to replace an employer-sponsored health plan for which the individual is eligible and which provides coverage that is at least actuarially equivalent to minimum creditable coverage. This definition does not apply to a person who has access to, or has waived access to, an employer-sponsored health plan.

Eligibility for an employer-sponsored health plan applies to both eligible employees and eligible dependents as defined in M.G.L. c. 176J, § 1.

The Chapter 288 amendments apply to *eligible individuals* only - they do not apply to an eligible small business or group (groups of 1-50) which will continue to have the right to apply for coverage throughout the year. Carriers may require that an applicant provide documentation to establish eligibility and, where necessary, may require the applicant to submit reasonable proof of prior coverage, including a letter of creditable coverage from the prior health plan. For the requirements for verification of the eligibility of a small group, see Division Bulletin 1998-08.

Individuals Exempt from Enrollment Restricted to Open Enrollment Periods

HIPAA-Eligible Individuals

Under Chapter 288, carriers must enroll an individual who is eligible under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. section 300gg-41(b), within 30 days of that individual's submission of a completed application.

This includes an individual:

- who had a prior health plan that was terminated no more than 63 days before the date of submission of the application; and
- whose prior health plan was a
  - group health plan (including COBRA or mini-COBRA),
  - government health plan (including Commonwealth Care),
  - church plan, or
  - health insurance plan offered in connection with any such plan; and
- whose prior coverage was "creditable coverage" as defined in 42 U.S.C. section 300gg(c) of HIPAA that was in effect for 18 or more months as of the date of submission of the application; so long as:
  - that individual, at the time of submission of the application, is not eligible for coverage under
    - A group health plan,
    - Medicare Part A or B,
    - Medicaid, and
  - was not terminated from the prior coverage due to fraud or non-payment of premium.

Other Qualifying Events

Carriers must enroll an eligible dependent (spouse and/or child(ren)) of an enrolled individual into the individual's health plan within 30 days of the qualifying event to the carrier of any of the following events that qualify the dependent for coverage:

- marriage (and establishment of domestic partnership, if available under the terms of the policy);
- birth of a child;
- adoption of a child or placement of that child for adoption;
- the dependent's loss of creditable coverage from another group or government plan; or
- upon court order.

Carriers must enroll an eligible individual in a health plan within 30 days of the date that the individual submits an application to the carrier, so long as the application is made within 63 days of the date of termination of the prior coverage, if the individual:

- was dis-enrolled from individual creditable coverage as defined in HIPAA due to loss of status as a dependent;
- was dis-enrolled from individual creditable coverage as defined in HIPAA due to the carrier's termination of the plan;
- had creditable coverage as defined in HIPAA in an individual health plan with coverage available only in a limited service area and this coverage is terminated because the individual has moved to a location in Massachusetts that is outside the original plan's service area; or
- loses eligibility for a qualified student health insurance plan or a Young Adult Health Benefit Plan.

Carriers must enroll a new eligible individual (i.e., not renewing) who qualifies to purchase coverage outside of open enrollment at any time only for a short year through the next open enrollment period and must either allow the individual to renew the existing coverage or to enroll in different coverage during the next open enrollment period.

Individuals Limited to Enrollment During Open Enrollment Periods

Carriers must enroll an eligible individual limited to enrollment during an open enrollment period only during a mandatory open enrollment period.

Carriers must make coverage effective the first of the month following submission of a complete application.

- Carriers must accept applications until the last date of the open enrollment period, and will consider that a postmark date, or online filing date, of February 15, 2011 or August 15 (of any year) satisfies the requirement that an application is submitted within the open enrollment period, even in the event that the application is not "complete" on the date of submission. See Division Bulletin 1997-10 for further information.

- Carriers shall not automatically deny applications that are submitted less than five (5) business days prior to an open enrollment period and instead must hold the applications for processing during the next open enrollment period.

- Carriers may establish a reasonable cut-off period for the purpose of determining the effective date.

Renewals and New Enrollees Outside of Open Enrollment

Carriers must take the following enrollment steps for an eligible individual seeking new coverage or seeking to renew individual coverage between December 1, 2010 and June 30, 2011:

- Carriers must allow an eligible individual to renew his or her existing individual coverage for a 12-month period on the renewal date or must allow the eligible individual to enroll in other available coverage for a 12-month period that becomes effective on the renewal date. In 2012, at the end of the 12-month period, a carrier must allow an eligible individual only to renew his or her existing coverage for a short year through July 31, 2012.

- A carrier must allow an eligible individual to enroll in new coverage during the January 1-February 15, 2011 open enrollment period for coverage for a 12-month period. In 2012, at the end of the 12-month period, the carrier must allow an eligible individual to renew his or her existing coverage for a short-year through July 31, 2012.

- A carrier must allow an eligible individual seeking to renew existing coverage or to enroll in new coverage during the July 1-August 15, 2012 open enrollment period to enroll in coverage that will be in effect until the next open enrollment period.

Carriers must take the following enrollment steps for an eligible individual seeking new coverage or seeking to renew individual coverage between July 1, 2011 and December 31, 2011:

- A carrier must allow an eligible individual to enroll in new coverage during the January 1-February 15, 2011 open enrollment period for coverage for a 12-month period. In 2012, at the end of the 12-month period, the carrier must allow an eligible individual only to renew his or her existing coverage for a short year through July 31, 2012.

- A carrier must allow an eligible individual to enroll in new coverage during the July 1-August 15, 2012 open enrollment period for coverage that will be in effect until the next open enrollment period.

- A carrier must allow an eligible individual only to renew his or her existing coverage for a short year through July 31, 2012.

Individuals Who Are Denied Enrollment

In the event that an applicant is denied the opportunity to enroll in a carrier's health plan, the carrier must provide electronic or written notice of the denial to the applicant no later than five (5) days after receipt of an application that specifies:

- the specific reason(s) the applicant's enrollment was denied, including:
    - the reasons the health plan has determined that the applicant is not considered to have met the standard as an eligible individual; or
    - the reasons the health plan has determined that the applicant is not considered to be exempt from being restricted to applying for coverage during required open enrollment periods;

- the right of the applicant to enroll during the specified open enrollment period, if any; and

- the right of certain applicants who do not qualify to enroll outside open enrollment periods to pursue a waiver process available from the Office of Patient Protection, which will be available after February 15, 2011.