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BULLETIN 2012-05

TO: Commercial Health Insurers, Blue Cross and Blue Shield of Massachusetts, Inc. and Health Maintenance Organizations Offering or Renewing Insured Health Products for Eligible Individuals within the Nongroup/Small Group Health Insurance Market in Massachusetts

FROM: Joseph G. Murphy, Commissioner of Insurance

DATE: June 29, 2012

RE: Open Enrollment and Continuation of Coverage for Eligible Individuals in Existing Plans with Policy-Year Deductibles

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The Division of Insurance ("Division") issues this Bulletin to address a unique situation that arises in the market for health coverage as of August 1, 2012 for many persons covered in individual health plans with policy-year deductibles, and is likely to arise again with the implementation of certain open enrollment rules required under the federal Patient Protection and Affordable Care Act ("ACA") in 2013. The Division expects all health carriers covering individuals with policy-year deductibles to take immediate steps to make accommodations to address this situation.

Chapter 288 of Acts of 2010 made significant changes to M.G.L. c. 176J, including changes to the enrollment rights for individuals in the Massachusetts merged small group/nongroup market ("Merged Market"). The statutory change effectively requires carriers to transition from continuous open enrollment for eligible individuals to a limited open enrollment period to take place between July 1 and August 15 each year. Due to these statutory changes, the Division promulgated certain amendments to 211 CMR 66.00, and issued Bulletin 2010-13 in December 2010 and Bulletin 2011-19 in December 2011 to establish rules requiring carriers to apply consistency in marketing, enrollment and renewal of individual health plans in the Merged Market.

The Division is aware that carriers' implementation of the noted rules may be causing disruption for certain individuals as they now transition to a common anniversary date of August 1, 2012. For persons in individual health plans with anniversary dates other than August 1 or September 1, Bulletins 2010-13 and 2011-19 instructed carriers to implement a so-called "short-year" health plan – health coverage lasting less than 12 months – from the person's post-August 1, 2011 or September 1, 2011 anniversary date through July 31, 2012. The noted regulation and bulletins do not address, however, the impact of these rules on those persons in existing individual health plans who may have plans with policy-year deductibles. The Division is aware that persons in these health plans may not understand that their policy-year deductible effectively resets to zero as of August 1, 2012, and that carriers have not taken adequate steps to enable these individuals to carry over amounts spent toward the deductible in the short-year toward the coverage in the new policy year.

In order to avoid possible financial hardship for persons in existing individual health plans who stay in the same health plan and whose policy-year deductible effectively resets as of August 1, 2012, all carriers must take immediate steps to allow these persons to extend their coverage beyond July 31, 2012 to the end of the 12-month period following their anniversary date.

No later than July 9, 2012, carriers or their designee must notify each person who currently is enrolled in an individual health plan with a policy-year deductible with a current anniversary date other than August 1 or September 1 of the right to either:

- Keep his/her existing policy with the same rates, benefits and deductible features that are part of the existing policy until 12 months from the anniversary date of the existing coverage; or,

- Choose to switch to any policy being offered in the Merged Market during the July 1 through August 15 open enrollment period and be subject to the premiums, benefits and deductible features that begin on the first day of the newly-selected policy.

Carriers or their designee must send a copy of all such notices issued to persons in existing individual policies with policy-year deductibles to the Division.

The notification issued to these persons must provide clear information about the policy-year deductible in their existing plan, the anniversary date of their existing coverage and the number of months remaining until their existing plan has been in effect for 12 months. The notification also must clearly indicate that these persons only have a right to switch to another plan during the July 1 through August 15 open enrollment period, and if they remain in their existing policy, their only choice at their next anniversary date will be to stay in the same policy until the next scheduled open enrollment period in 2013. All notices must provide clear examples that the individual may consider when making their choice.

Many carriers have systems that automatically re-enroll coverage in the same plan if the covered person does not provide any notice that they are switching plans during open enrollment. Carriers' notices must give clear guidance that these individuals may switch to new coverage

prior to July 24, 2012 that will become effective August 1, 2012, or may switch to new coverage until August 15, 2012 that will become effective September 1, 2012. Absent an explicit choice to switch to another health plan made during the July 1, 2012 through August 15, 2012 open enrollment period, carriers must permit persons in existing individual health plans with policy-year deductibles to continue their coverage in these plans for twelve months from the policy's last anniversary date at the premium and benefits currently in effect. Carriers also must permit those individuals whose policies extend until twelve months from the policy's last anniversary date to renew these plans at the policy's next anniversary date at the premium and benefits that are in effect on the anniversary date.

This Bulletin applies to the 2012 open enrollment period. The Division expects to review all open enrollment rules carefully with the onset of new federally required ACA open enrollment rules in 2013, and will provide further guidance to carriers prior to the 2013 open enrollment period. If you have any questions regarding this Bulletin, please contact Kevin Beagan, Deputy Commissioner, Health Care Access Bureau at (617) 521-7323.