



August 17, 2015

Daniel R. Judson
Commissioner of Insurance
Division of Insurance
1000 Washington Street
Suite 810
Boston, MA 02118-6200

RE: DOI Regulatory Review Written Comments

Dear Commissioner,

I am writing on behalf of the Massachusetts Association of Health Underwriters (MassAHU) which represents employee benefits brokers, producers and consultants throughout the Commonwealth. MassAHU, a state chapter of the National Association of Health Underwriters, would like to commend Governor Baker on initiating a review of the current regulations to help eliminate inefficient use of time, money and energy for residents and businesses alike.

The following are comments/recommendations made by MassAHU's Legislative Committee in reviewing the following existing regulations:

Health Insurance

211 CMR 63.00 YOUNG ADULT HEALTH BENEFIT PLANS

As a result of the provisions of the Affordable Care Act (ACA), young adult health plans are not offered in Massachusetts. The federal law has provided for catastrophic insurance plans for individuals, ages 18 to 30. These plans are offered through the various health exchanges and here in Massachusetts through the Health Insurance Connector, Chapter 176Q. Therefore regulation 211 CMR 63.00 promulgated as authorized by Section 10 of Chapter 176J is not needed and should be eliminated.

211 CMR 66.00 SMALL GROUP HEALTH INSURANCE REGULATIONS

These regulations were enacted for an effective date of July 1, 2007. As such, most of the market has acclimated to these regulations.

However, if the merging of the market to include the 50-99 employers, MassAHU is concerned that there will be significant disruption unless there is a change in the language in "66.04: Definitions: Eligible Small Business of Group: ...engaged in business who, on at least 50% of its working days during the preceding year, employed from among one to not more than 50 employees, *the majority of whom worked in Massachusetts*; provided..."

This provision that at least 51% of the employees work in Massachusetts is problematic for a relatively few firms in the under 50 market, but would create very significant problems with larger firms, which may be structured to operate more broadly in markets outside of Massachusetts. The existing language could incent companies to move their headquarters, and thus the majority of their buying decisions, out of the Commonwealth. This will have a negative impact on employees, on other local businesses, and on the tax base on the Commonwealth.

When the language is changed to include the 50-99 market, MassAHU is suggesting that you strike / delete the above italicized phrase.

211 CMR 153.00 CONTINUITY OF CARE ACCESS TO COMPREHENSIVE CANCER CENTERS, PEDIATRIC HOSPITALS, AND PEDIATRIC SPECIALTY UNITS FOR SMALL GROUP HEALTH BENEFIT PLANS THAT UTILIZE LIMITED, REGIONAL OR TIERED PROVIDER NETWORKS.

This regulation seeks to provide guidance on continuity of care access to Comprehensive Cancer Centers, Pediatric Hospitals and Pediatric Specialty Units for members who are enrolled in small group or individual health plans with limited or tiered networks. The current regulation regarding continuity of care was effective May 1, 2012.

The overriding concerns of MassAHU are that the Continuity of Care regulations are communicated clearly, delivered timely to members and managed fairly.

First, our concern is that only Comprehensive Cancer Centers are cited. The regulations should be expanded to cover cancer treatments at all hospitals, not just Dana Farber.

Second, Section 153:03 Notice to Insureds requires the carrier to deliver the notice to newly insured members prior to the effective date of coverage. We request that the state require such notice to be incorporated into the SBC or other documents for open enrollment. The SBCs do not currently include language referring to limited networks.

And, finally, the regulations do not spell out the timeline for the carrier to approve Continuity of Care. When a member is undergoing cancer treatments, time is of the essence and approvals must be in place prior to the effective date to offer the member some peace of mind.

We also recommend that Massachusetts adopt the NAIC Managed Care Plan Network Adequacy Model Act if it has not done so already. The adoption of the Model Act was among the recommendations in the November 2014 report on “Ensuring Consumers’ Access to Care: Network Adequacy State Insurance Survey, Findings and Recommendations for Regulatory Reforms in a Changing Insurance Market.”

This survey recommended that all states adopt the NAIC Managed Care Plan Network Adequacy Model Act to address such concerns.

211 CMR 151.00 CERTIFIED GROUP PURCHASING COOPERATIVES

The initial intent of 211 CMR 151.00 was to implement the provisions of St. 2010, c. 288 and M.G.L. c. 176J, §§ 12 and 13 for the Small Business Group Purchasing Cooperatives and any Carrier that offered, provided or arranged for insured Health Benefit Plans to be offered through Small Business Group Purchasing Cooperatives in the Commonwealth. The purpose of 211 CMR 151.00 was to help offset certain associations, chambers and other trade groups in need of affordable health plan options. Based on one report, which states, that "most cooperatives have not brought meaningful product options to the small group market" and that even a "successful" coop only improves rates "slightly". (Joseph G. Murphy, SMALL GROUP HEALTH PURCHASING COOPERATIVES, Report on the Informational Sessions Held Between November 10, 2009 and January 12, 2010 on Group Purchasing Cooperatives; MA Division of Insurance, 2010; Page 4), MassAHU recommends that the Division of Insurance review this regulation. While the Commissioner of Insurance has the discretion to limit the number of coops (to 6) and the number of insured within those coops, anecdotally, there is very little evidence to support that coops have reduced health care costs or have improved employee health; or that the wellness requirements have been met (33% participation requirement). Does this regulation continue to be feasible and current? Some would argue that it just adds “complexity in the system” a system which already provides the very same coverages for competitive pricing.

211 CMR 152.00 HEALTH BENEFIT PLANS USING LIMITED, REGIONAL OR TIERED PROVIDER NETWORKS

Unlike Coops, Limited, Regional or Tiered provider networks do significantly reduce health care costs and are widely used today which is what MassAHU believes is the intent of this regulation.

These plans provide a valuable alternative to increased cost sharing when employers and employees are considering their options.

MassAHU recommends maintaining the 211.CMR 152.00 regulations but would like to recommend the need for greater transparency on provider tiering. We think this should be improved so that there are fewer issues with changes to provider tiers that affect members in the middle of a plan year and employers should also be notified by the carriers in the event of provider tier reclassification (currently only the DOI, subscribers and providers are notified).

Miscellaneous

211 CMR LONG TERM CARE INSURANCE

As a result of the passage of Chapter 372 of the Acts of 2012, Massachusetts General Laws Chapter 176U was created that established standards for Long Term Care Insurance. Subsequent to the enactment of Chapter 176U, the Division of Insurance held a hearing on August 1, 2014 to consider proposed amendments to 211 CMR 65.00 that set new standards for long term care insurance policies, rate setting and cost controls and created various consumer protections. The Massachusetts Association of Health Underwriters (MassAHU) actively participated in the Insurance Commissioner's Rate Stabilization Workgroup as well as public input sessions regarding disclosures, producer training and rate stabilization/rate review. The result of all this work culminated in what is currently contained in 211 CMR 65.00 Long Term Care Insurance. On behalf of MassAHU, we would recommend that what is contained in the LTC regulations remain in place without any changes. It has taken a long time to get to where we are today with respect to Long Term Care Insurance as we continue to work toward improving the LTCi marketplace for consumers.

Thank you for the opportunity to respond to your statewide effort in reviewing all existing regulations.

Sincerely,

Daniel J. Foley, Esq.
Legislative Counsel
MassAHU