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Insurance Department**
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BULLETIN
Docket No.: INS No. 08-014-AB

TO: All New Hampshire Licensed Health Insurance Companies, Health Maintenance Organizations, Fraternal Benefit Societies and Third Party Administrators

FROM: Roger A. Sevigay
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DATE: March 4, 2008

RE: Health Insurance Jurisdiction

This bulletin is intended to provide guidance on when a carrier is required to file and obtain approval for a certificate or policy of group insurance that provides coverage for a New Hampshire resident. RSA 415:18 states that no policy or certificate of insurance shall be "delivered or issued for delivery in this state to a resident of this state without the prior written approval of the commissioner." The question raised is whether this statute requires that a carrier file and obtain approval for all group policies and certificates issued or delivered to New Hampshire residents.

In short, the answer is that RSA 415:18 applies only when the issuance or delivery of a policy or certificate of health insurance would subject the carrier to New Hampshire's licensing jurisdiction. Accordingly, a carrier is not required to file and obtain approval before providing group coverage to an out-of-state group, which includes New Hampshire residents whose principal work site location is out of state. Conversely, a carrier is required to file and obtain approval from New Hampshire before providing group coverage to an out-of-state group that has a New Hampshire branch office where that is the principal work location of New Hampshire residents.

In this case, RSA 415:18 requires that a carrier submit the policy and certificates of group coverage to New Hampshire for review under RSA 415:18 and obtain approval from the department before issuing and delivering those certificates or policies to the members of that group that live and work in New Hampshire. The policies and certificates that evidence coverage for the New Hampshire resident employees who work in a New Hampshire branch location must conform to New Hampshire law and contain all New Hampshire mandates.

Interpreting RSA 415:18 to require that a carrier file and obtain approval of group policy forms and certificates evidencing coverage for New Hampshire residents whose principal place of employment is in New Hampshire is consistent with the intent of New Hampshire's licensing law, the language of New Hampshire insurance mandates, and the New Hampshire Supreme Court's decision in *Metropolitan Life Insurance Company v. Whaland*, 119 N.H. 894 (1979).

First, with respect to New Hampshire's insurance licensing law, RSA 406-B identifies a primary purpose of the licensing law as that of protecting the residents of New Hampshire from having to seek legal recourse to protect their rights in "forums foreign to them under the laws and rules of the practice with which they are not familiar." To implement this purpose, New Hampshire's licensing law generally requires that a carrier obtain a license prior to issuing and delivering a contract or certificate of insurance to a resident of New Hampshire or to a person authorized to do business in New Hampshire. RSA 406-B:2. Some carriers have suggested that the issuance and delivery of a master policy to an out-of-state employer that covers employees who live and work at a branch business location in New Hampshire does not constitute issuance and delivery of an insurance contract or certificate of insurance in New Hampshire and does not subject that carrier to New Hampshire's licensing jurisdiction. This is clearly not the case under New Hampshire's licensing statutes, which explicitly describe the activities that a carrier may engage in without obtaining a New Hampshire license.

Under the unauthorized insurance statutes set forth in RSA 406-B:11 and RSA 406-B:16, the issuance of a master policy to an out-of-state employer is allowed only when the risk covered by the policy is not located in New Hampshire or anticipated to be located in New Hampshire at the time the policy is issued. If the risk is located in New Hampshire at the time the policy is issued, the carrier must obtain a license from New Hampshire and submit its policy forms and certificates to the department for review and approval. The relevant provision pertaining to the issuance of a master policy to an out-of-state employer is set forth in RSA 406-B:16, III, which states that a carrier is not required to obtain a license from New Hampshire for insurance transactions that occur in New Hampshire but "involve a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy." See also, RSA 406-B:10, II.

This exemption from New Hampshire's licensing law and regulatory approval process does not allow a carrier to issue a master policy to an out-of-state employer when that policy is, at the time of issuance, intended to cover employees who live in New Hampshire and have a work location in New Hampshire. Where an out-of-state employer has a branch business location in New Hampshire, certificates issued on policies to employees who reside and work in New Hampshire must contain the New Hampshire mandates and conform to New Hampshire law. In that situation, the unauthorized insurance statutes do not relieve the carrier from complying with all requirements that apply to policies issued and delivered in New Hampshire. In short, a policy or certificate that covers employees, who are, at the time of policy issuance, known by the carrier to live in New Hampshire and have a physical work location in New Hampshire, must be submitted for form approval pursuant to RSA 415:18.

The requirement that a carrier obtain a license and submit the policies and certificates for form review is necessary to ensure that New Hampshire residents are accorded the protections afforded by New Hampshire's benefit and eligibility mandates. New Hampshire mandates generally fall into three types of categories: one extends the mandate to all residents who are members of the group and whose principal place of employment is in New Hampshire; the second extends the mandate to all residents who are members of a group; and the third extends the mandate to all residents of New Hampshire regardless of where the policy was issued or delivered. An example of the first type of mandate is RSA 415:18-a, which requires that a carrier provide coverage for mental health services.

In *Metropolitan Life Insurance v. Whaland* case, the New Hampshire Supreme Court held that this mandate required a carrier to provide mental health services to a New Hampshire resident employed at a New Hampshire branch location where the master policy had issued in New York to General Electric. RSA 415:18-a states that it shall apply to residents of New Hampshire whose principal place of employment is in New Hampshire. By its express language, the mandate requires that: "Each insurer that issues or renews any policy of group or blanket accident or health insurance providing benefits for medical or hospital expenses, shall provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state and whose principal place of employment is in this state..." To ensure that New Hampshire residents who work in New Hampshire obtain the benefit of these mandates, the department requires that when a carrier provides coverage to an out-of-state group that has members who are employed at a branch location in New Hampshire that the carrier submit its certificate and policy forms that evidence coverage for those New Hampshire residents to the department for review and approval. Although other mandates extend the protection of the mandate to all residents regardless of where the underlying policy is issued or delivered, constitutional and regulatory constraints prohibit the department from enforcing the review requirement for policies issued out of state for residents who do not work in New Hampshire.

While the department's interpretation of its regulatory review requirements does not provide regulatory oversight for all policies and certificates that evidence coverage covering New Hampshire residents, it is consistent with New Hampshire's licensing jurisdiction and with the New Hampshire Supreme Court's ruling in the *Whaland* case. In that case, the court held that a policy issued to an out-of-state employer covering a New Hampshire resident must include New Hampshire mandated mental health benefits for coverage issued to New Hampshire residents employed at a New Hampshire location. The Court stated: "The above requirements apply equally to policies issued in and outside of the State. The State has a valid and substantial interest in the availability of mental health benefits and treatment to the members of a sizeable portion of its population who must rely on group policies for mental health treatment." Accordingly, the department will require that all group policies and certificates of health insurance that are written to cover employees who live and work at a branch business location in New Hampshire be submitted for form approval and comply fully with New Hampshire law.