



The State of New Hampshire
Insurance Department
21 South Fruit Street, Suite 14
Concord, NH 03301

Roger A. Sevigny
Commissioner

Alexander K. Feldvebel
Deputy Commissioner

BULLETIN

Docket Number: INS NO. 10-008-AB

TO: All Health Insurers and Third Party Administrators Authorized to Conduct Business in New Hampshire

FROM: Roger A. Sevigny, Insurance Commissioner

A handwritten signature in black ink, appearing to read "R. Sevigny", positioned to the right of the "FROM:" line.

DATE: January 21, 2010

RE: Professional Employer Organizations (PEOs): Group Health Insurance Statutes, and Small Group Health Insurance Statutes

On March 11, 2009, the Department issued Bulletin INS No. 08-079-AB in response to questions received inquiring whether a carrier is permitted to issue a large group health insurance policy to a professional employer organization or employee leasing company (hereinafter PEO).

INS 08-079-AB makes clear that the Employee Retirement Income Security Act of 1974, Public Law No. 93-406 (ERISA) controls and preempts any state law that would purport to govern what person or entity is an employer under ERISA. The United States Department of Labor has stated that when a PEO contracts with multiple employers (client companies) to provide employee welfare benefits (including health insurance) for the benefit of individuals working as employees of those client companies, the PEO is not the employer. Because of federal preemption, no state law can establish the PEO as the employer for purposes of employee welfare benefits in contravention of ERISA.

Chapter 277-B, governs the operation, regulation and licensing of PEOs. Chapter 277-B states that a PEO may sponsor and maintain employee benefits for the employees of the client company and provides for a co-employer relationship between the PEO and client company. However, any application of Chapter 277-B that purports to control whether the PEO is the employer of an employee receiving benefits under an employee welfare benefit plan is preempted by ERISA.

On March 13, 2009, a further clarification bulletin, INS 09-021-AB, was released to address the status of existing policies of insurance issued in violation of state law to a PEO as the employer. That Bulletin provided assurance that existing policies would

continue to be considered valid pending further direction to insurers from the Department.

This bulletin is accordingly issued to provide that further guidance to insurers who have issued or plan to issue health insurance that covers New Hampshire residents who work in New Hampshire for a client company contracting with a PEO. In order to comply with state insurance law, the insurer must comply with the following guidelines:

- (1) If the client company contracting with the PEO is a large employer, the insurer may issue a large group policy to the client company. A large group policy may not be issued to the PEO.
- (2) If the client company contracting with the PEO is a small employer, the carrier may:
 - (a) Issue a small group policy to the client company, provided the policy complies with all requirements of New Hampshire small group insurance laws including but not limited to, small group rating laws and laws requiring guaranteed issue and guaranteed renewal.
 - (b) Issue a small group policy to the PEO if the PEO is duly licensed as a purchasing alliance in accordance with New Hampshire law and the policy complies with all requirements of New Hampshire small group insurance laws including but not limited to, small group rating laws and laws requiring guaranteed issue and guaranteed renewal.

All health insurance issued after June 30, 2010 that covers New Hampshire residents who work in New Hampshire for a client company that contracts with a PEO must comply with the above guidelines.

Please contact Leslie Ludtke at leslie.ludtke@ins.nh.gov or at (603) 271-2261 if you have any questions.