



**The State of New Hampshire  
Insurance Department**

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**BULLETIN**  
**Docket No.: INS No. 07-064-AB**

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

**FROM:** Roger A. Seigny  
Insurance Commissioner

**DATE:** September 7, 2007

**RE:** Implementation of SB 197 – Divorced Spouse Bill

This Bulletin is intended to answer questions that have been raised concerning the implementation of SB 197. This bill allows a former spouse or eligible dependent to remain on the subscriber's policy for a certain period of time after a final decree of divorce. The effective date of the bill is January 1, 2008.

The first question that has been raised is whether the bill applies to a final decree of divorce that occurs before the January 1, 2008 effective date. In short, the answer is that it does not. The legislation provides that any group or blanket accident and health policy covering a resident of New Hampshire shall contain a provision allowing a divorced spouse or eligible dependent to remain on the policy after the issuance of a final divorce decree. This requirement does not apply to individual policies of insurance. By statute, the provision of the policy is the source of the right to remain on the policy. As there is no legal requirement that the policy contain this provision before January 1, 2008, there is no right to remain on the policy in a divorce occurring before January 1, 2008.

The second question concerns whether the bill applies to policies that are in force as of January 1, 2008, or only to those that are issued and delivered on or after the effective date. For policies issued and delivered before the January 1, 2008 effective date, but in force as of January 1, 2008, the policies would not contain the required provision allowing for continued eligibility for benefits. The legislation does not distinguish between policies in force as of January 1, 2008 and those issued and delivered on or after the effective date of the legislation. There is nothing in the legislation to suggest that the

legislature intended to limit the right to continued access to those persons whose policies were issued or delivered on or after the effective date of the legislation. Due to the absence of any limiting language in the bill, the right to continued eligibility for benefits is deemed to apply to all policies in force as of January 1, 2008, regardless of the date of issue and delivery.

The third question that has been raised relates to whether the right to continued access is portable and continues when the subscriber terminates coverage with one employer and obtains coverage from a new employer. The short answer is that it is not portable. The right to continued eligibility continues only so long as the member maintains coverage either under the same plan or under a new plan offered by his or her employer. This interpretation is based on the specific provision of SB 197 that provide that the former spouse shall remain eligible for coverage while such policy remains in force or is replaced by another group or blanket policy covering the member, or until certain events occur. Determining whether the right to continued access is portable depends upon determining the meaning of the term “replaced.” Generally, the term replaced means that one policy is substituted for another policy. Applying the common meaning of the word “replaced” to SB 197 suggests that the legislature intended the right of continued eligibility to apply when the member’s coverage or benefit plan changed, but not when the member terminated that coverage and obtained new coverage from a different employer. In the event that a member terminates coverage and obtains new coverage from a different employer, the former spouse has the right to obtain continuation of coverage with the original group under New Hampshire law.

The fourth question regarding the implementation of SB 197 pertains to whether it applies to policies that are issued and delivered outside of New Hampshire, but cover New Hampshire residents. The law provides that any group or blanket accident and health insurance policy covering a resident of New Hampshire shall provide a right of continued eligibility upon divorce. SB 197 does not contain any language limiting the application of this requirement to policies that are issued and delivered in New Hampshire. Accordingly, the right to continued eligibility upon divorce applies to any resident of New Hampshire who has insurance under a group or blanket accident or health policy regardless of where that policy is issued or delivered.

The final question that has been raised concerns the length of time a former spouse may receive continuation coverage when coverage under the employee’s plan terminates. If coverage under the employee’s plan terminates due to the remarriage of the member, the remarriage of the former spouse, the death of the member, the third year anniversary of the divorce or legal separation, or an earlier time as provided in the divorce, then the right to continuation coverage will continue for at least 36 months, or alternatively in the case of a former spouse who is 55 years or older when the member dies until that person becomes eligible for Medicare or another group plan. However, if the right to continuation coverage arises due to the member’s termination of employment, the right shall continue for a period of 18 months.

Questions should be directed to Leslie Ludtke at [leslie.ludtke@ins.nh.gov](mailto:leslie.ludtke@ins.nh.gov) at the New Hampshire Insurance Department.