

## The State of New Hampshire Insurance Department

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> Alexander K. Feldvebel Deputy Commissioner

BULLETIN
No.: INS No. 10-041-AB

TO:

All New Hampshire Licensed Health Insurance

Companies, Health Maintenance Organizations, Fraternal Benefit Societies and Third Party

Administrators

FROM:

Roger A. Sevigny

Insurance Commissioner

DATE:

September 23, 2010

SUBJECT:

Individual Health Insurance Underwriting and the

Patient Protection and Affordable Care Act of 2009

This bulletin is intended to clarify the underwriting limitations and requirements that apply to health carriers doing business in the individual market. The Department has learned that health carriers doing business in New Hampshire's individual market intend to stop issuing coverage to children under age 19. Under recently enacted federal law, when carriers issue coverage to persons under age 19 that coverage must be issued on a guarantee issue basis with no provision for pre-existing medical conditions.

New Hampshire's General Court, when repealing guaranteed issue in the individual market, established market rules to ensure that every New Hampshire resident would have guaranteed access to at least one of two individual insurance products. It did this by establishing a high risk pool and specifying that any New Hampshire resident who is denied coverage from any individual health carrier is eligible to obtain coverage through the high risk pool. For this market safety net to work, a health carrier offering individual coverage must take an application from any person interested in obtaining individual coverage, regardless of that person's age or other circumstances.

By law, a health carrier that takes an application for individual health coverage may issue medically underwritten coverage or may deny coverage entirely. RSA 420-G:5 states that, "Health carriers providing health coverage for individuals may perform medical underwriting... to the extent necessary to establish or modify premium rates." Paragraph II of RSA 420-G:5 further provides that, "Health carriers providing coverage for individuals may refuse to write or issue coverage to an

individual because of his or her health status." Medical information or other information obtained in connection with an individual application may be used to establish or modify premium rates or to deny coverage. It may not be used for any other purpose. An application for individual insurance may not be denied for non-medical reasons, including, but not limited to age or recreational activities. Marketing individual coverage so as to limit sales of products to certain age groups is not permissible under New Hampshire law.

The Patient Protection and Affordable Care Act of 2009 (hereinafter "ACA"), and the guidance provided relative to the provisions of the Act, prohibit a carrier from denying coverage to an applicant under the age of 19 for medical reasons. This federal requirement takes effect for any coverage applied for with an effective date on or after September 23, 2010. The "ACA" provisions, coupled with NH law, require all individual health insurance carriers to take an application for any of their individual products from any New Hampshire resident, regardless of that person's age. For an applicant under age 19, a health carrier must guarantee issue any of its individual products. That product may be medically underwritten for the limited purpose of establishing or modifying a premium rate to an applicant who has guaranteed issue access under federal law.

The Department has previously issued guidance regarding medical underwriting in the individual insurance market. In 2007, the Department promulgated Bulletin INS No. 07-068-AB. At that time, the Department had learned carriers were refusing to write individuals who were eligible for group health insurance. The premise now, as then, is the same. The only permitted type of underwriting is medical underwriting and it may only be used to either deny coverage to persons age 19 or over or to establish or modify a premium rate for any applicant.

The Department intends to vigorously enforce the law and will take action against an individual health carrier for a refusal to take an application from a person under the age of 19 or a denial of coverage to such a person. The Department will request that the New Hampshire Individual Health Plan Benefit Association (NHIHPBA) deem any NH resident who is denied the opportunity to make an application for individual health insurance coverage as having been denied coverage and that such resident be deemed eligible for high risk pool coverage pursuant to RSA 404-G:5-e.

Questions regarding this bulletin should be direct to Leslie Ludtke, Health Policy Analyst, New Hampshire Insurance Department, vie e-mail at leslie.ludtke@ins.nh.gov.