



The State of New Hampshire Insurance Department

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Commissioner

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WAIVER APPLICATION DECISION **RE PROTECTIVE LIFE INSURANCE COMPANY** **REQUEST TO WAIVE INS 6001.03(C)(3)(d)(f)**

I. Introduction

On August 10, 2021 Protective Life Insurance Company (hereinafter referred to as "Protective"), by and through counsel, submitted a request to the NH Department of Insurance (hereinafter referred to as "Department") for a waiver per Ins 6001.07. The request is for relief from Ins 6001.03(c)(3)(d)(f), which list certain requirements for ancillary health policies issued to associations. The request for a waiver is specific to Serf Filing PTTV-13287997, 132884182, 132884184 and 132884188 for the American Dental Association.

II. Legal Authority

New Hampshire adopted Ins 6001.07 Waiver of Rules permitting an insurer to request and the Commissioner to waive application of an administrative rule that pertains to ancillary health insurance policies if certain conditions are satisfied.¹

III. Discussion

Protective submitted a request for waiver relative to a filing of disability income and ancillary health products. Protective is in the process of assuming a block of

¹ Ins 6001.07 Waiver or Suspension of Rules.

- (a) The commissioner, upon the commissioner's own initiate or upon request by an insurer, shall waive any requirement of this chapter if such waiver does not contradict the objective or intent of the rule and:
 - (1) Applying the rule provision would cause confusion or would be misleading to consumers;
 - (2) The rule provision is in whole or in part inapplicable to the given circumstances;
 - (3) There are specific circumstances unique to the situation such that strict compliance with the rule would be onerous without promoting the objective or intent of the rule provision; or
 - (4) Any other similar extenuating circumstances exist such that application of an alternative standard or procedure better promotes the objective or intent of the rule provision.
- (b) No requirement prescribed by statute shall be waived unless expressly authorized by law.
- (c) Any person or entity seeking a waiver shall make a request in writing.
- (d) A request for a waiver shall specify the basis for the waiver and proposed alternative, if any.

business from Great West Insurance Company. Therefore, it will be issuing these products as replacement group coverage to members of the American Dental Association. Certificates issued to associations must meet the requirements of Ins 6001.03(c)(3).² Specifically, Protective seeks waiver of the following sections of the rule:

(d) The amounts of insurance under the policy shall be based upon a plan precluding individual selection by the persons insured; and

(f) The association makes ancillary health insurance coverage offered through the association available to all individual members and employees of the association regardless of any health status-related factor relating to the members or employees, or individuals eligible for coverage through an individual member or employee.

Ins 6001.03(c)(3) regulates the associations to which insurers may offer insurance. The purpose of the rule is to protect consumers and prevent the improper marketing of insurance by associations. The rule governs associations that are comprised of either employees (employment based groups that do not fall under specifically identified groups in Ins 6001.03) or members (other non-employment based groups). The rule closely follows the federal regulation regarding *bona fide* associations, which incorporates language to ensure group coverage will meet certain federal requirements. Specifically, section (d) relates to an IRS regulation when benefits received as part of employment compensation. Section (f) is associated with HIPPA and ERISA requirements of employee benefit plans.

The American Dental Association was formed in 1860 for purposes other than insurance. It has a robust formal organizational structure and strong commonality among its membership. The membership is not employment based, such that insurance products offered to the members are not subject to HIPPA, ERISA or the above-referenced IRS requirements.

² Ins 6001.03(c)(3) A policy issued to an association, which shall be deemed the policyholder, that meets the following criteria:

- a. The association has been in existence for a period of at least 5 years and is organized for purposes other than obtaining insurance;
- b. The association can elect to insure their members, employees, or both;
- c. Insurance premiums are paid by members, employees, or both, of the association, with or without contribution by the association;
- d. The amounts of insurance under the policy shall be based upon a plan precluding individual selection by the persons insured;
- e. The association does not condition membership on any health status-related factor relating to an individual;
- f. The association makes ancillary health insurance coverage offered through the association available to all individual members and employees of the association regardless of any health status-related factor relating to the members or employees, or individuals eligible for coverage through an individual member or employee; and
- g. The association does not make ancillary health insurance coverage, offered through the association, available other than in connection with an individual member or employee of the association;

IV. Conclusion

Waiving Ins 6001.03(c)(3)(d) and (f), *as applied to this association*, does not contradict the objective or intent of Ins 6001.03(c)(3). Additionally, there are specific circumstances unique to this situation such that strict compliance with the rules would be onerous without promoting the objection or intent of the rule. As such, the Department grants the waiver application.

Dated: 8-19-2021


Christopher R. Nicolopoulos, Commissioner