



The State of New Hampshire
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BULLETIN
Docket No.: INS 07-088-AB

TO: All New Hampshire Licensed Insurance Companies

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FROM: Roger A. Sevigny
Insurance Commissioner

DATE: December 18, 2007

RE: Implementation of New Hampshire's Civil Union Law, RSA 457-A:6

This Bulletin is intended to answer questions that have been raised concerning the implementation of New Hampshire's civil union law. This law takes effect on January 1, 2008, and allows same sex couples to enter into a civil union that confers the same legal rights and obligations upon them as apply to married couples. RSA 457-A:6. The law also extends legal recognition to civil unions entered into outside of New Hampshire, provided that the relationship meets the provisions of New Hampshire's civil union law. Questions have been raised to date concerning the effective date of HB 437, form filing requirements, whether the law applies to self-insured plans, when civil union partners may be added to an existing plan, when civil union partners have a right to state continuation, and what amendments are required to existing policies. These and other questions will be addressed separately.

1. What is the effective date for HB 437?

Answer: HB 437 is effective January 1, 2008. As of January 1, 2008, an individual who enters into a civil union is entitled to all the rights provided by state law that apply to an individual who is married. Therefore, all in force insurance as of January 1, 2008 and all policies or contracts solicited, delivered, and issued after January 1, 2008 must comply with HB 437.

2. How does HB 437 impact insurance policies and other forms used in insurance transactions?

Answer: All insurers must make appropriate filings to amend policy language so that any policy or other form issued after January 1, 2008 and used in conjunction with the solicitation, delivery and issuance of insurance or to provide evidence of insurance coverage, complies with HB 437. Generally, policy language shall be amended to provide the same benefits to those joined in civil unions as are provided to those joined in marriage. For example, where a policy defines “named insured” to include a “spouse” or the “husband or wife” of the insured, the policy must be amended to add the term “partner to a civil union.”

On January 1, 2008, all in force contracts are amended by operation of law to conform with HB 437. This means that all policies will, without any action on the part of the insurer, insured or certificate holder, be interpreted and enforced so as to provide the same benefits to partners to a civil union as to those who are married. Upon renewal, the insurer must issue a renewal policy that complies with HB 437.

3. What proof of civil union status may a carrier require?

Answer: Insurers cannot impose more stringent requirements to prove a civil union than are required to establish a marriage. An insurer cannot, for example, require certification or evidence that the couple joined by civil union has a joint account, owns real estate jointly, or shares a residence, unless the insurer also requires the same certification or evidence of couples joined in marriage to prove the marriage.

4. Does a civil union partner have standing to sue in actions that require spousal status?

Answer. Yes. HB 437 provides that a civil union partner has the same rights under state law as a married individual. Carriers should assess risks with this in mind and adjust claims and claims handling procedures accordingly.

5. Does the Civil Union law apply to self-insured plans that provide health benefits?

Answer: The civil union law does not apply to plans that are regulated under ERISA and are outside of the state’s jurisdiction to regulate. Self-funded benefits provided through state and local “governmental plans” are not regulated under ERISA or under state insurance laws. Consult your legal counsel on the application of the civil union law to governmental plans.

6. When may a civil union partner who enters into a civil union be added to an existing plan?

Answer: Civil Union partners who enter into a valid civil union on or after January 1, 2008 are eligible for special enrollment under RSA 420-G:8, V. for small and large group coverage. Civil union partners may be enrolled in individual coverage as late enrollees.

Explanation: Civil union partners who enter into a valid civil union in New Hampshire after January 1, 2008 may be added to an existing small or large group policy under the special enrollment period provided for in RSA 420-G:8, V. The special enrollment period begins on the date of the civil union and continues for a period of at least 30 days. If a civil union partner is enrolled during this period, the coverage shall become effective on the first day of the first month following the completed request for enrollment. The special open enrollment provisions do not apply to governmental plans.

7. Does the special enrollment period set forth in RSA 420-G:8, V. apply to a person who has entered into civil union in another state before January 1, 2008?

Answer: Civil unions partners who have entered into a civil union in another state prior to January 1, 2008, and whose civil union is recognized as legally valid by New Hampshire on January 1, 2008, may enroll under the special enrollment period set forth in RSA 420-G:8, V. The special open enrollment period for partners to a civil union entered in another state before January 1, 2008 shall begin on January 1, 2008 and continue for a minimum of 30 days.

Explanation: RSA 420-G:8, V. provides in relevant part that a person who becomes a dependent through marriage shall be provided with a special open enrollment period. In this instance, the legal recognition of the civil union by New Hampshire establishes a legal status that affords all the rights, obligations and responsibilities provided for in state law that apply to parties who are joined together in a marriage pursuant to RSA 457. Civil unions legally contracted in other jurisdictions between persons of the same sex are recognized by New Hampshire as civil unions, provided the relationship meets the requirements of New Hampshire's civil union law. Due to their similarity to New Hampshire's Civil Union Law, civil unions or domestic partnerships entered into in Vermont, New Jersey, Oregon and Connecticut will be recognized by New Hampshire. Civil unions or domestic partnerships entered into in the following jurisdictions will be recognized by New Hampshire on a case-by-case basis so long as they are of same-sex partners and comply with New Hampshire law: California, Maine, Hawaii, Washington, D.C., Washington, Canada. In addition, marriages legally contracted in other jurisdictions between persons of the same sex are recognized by New Hampshire as civil unions, provided the relationship meets the requirements of New Hampshire's civil union law. Therefore, same-sex marriages entered into in Massachusetts will be recognized as a civil union in New Hampshire. Marriages legally contracted in other countries between persons of the same sex will be recognized as a civil union by New Hampshire, so long as they comply with New Hampshire law.

8. When may a civil union partner exercise a right to state continuation of coverage or COBRA benefits?

Answer: State continuation law applies to any civil union partner who is covered by a fully insured plan.

Explanation: State continuation law confers certain rights upon a spouse to continued coverage in the event of a termination of group coverage. These rights apply to all fully insured plans, regardless of the size of the group. State continuation law does not apply

to self-insured health plans. Consult with your legal counsel regarding continuation rights of civil union partners covered under self-insured governmental plans.

Federal law (COBRA) does provide for continuation rights for married persons covered under self-insured health plans. However, COBRA continuation rights are not available to partners in a civil union. Federal law does not recognize a civil union partner as a qualified beneficiary entitled to continuation rights.

9. Does the law extending a right to divorced spouses to remain on a plan apply to domestic partners?

Answer: Parties to a civil union who terminate the civil union after January 1, 2008 are entitled to exercise the same rights as married persons to remain on a policy after divorce.

Explanation: HB 437, enacted in 2007, allows divorced spouses to remain on their ex-spouses coverage, without change, for a period of three years from the date of the divorce. Although this law references only the term “marriage,” under the standard established by the civil union law, the rights and obligations created under this law apply equally to civil unions.