THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT

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Roger A. Sevigny
Commissioner

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Deputy Commissioner

BULLETIN
Docket No.: INS-16-034-AB

TO: All New Hampshire Licensed Health Carriers and Third Party Administrators

FROM: Roger A. Sevigny

DATE: November 22, 2016

RE: Health Claims Data Submission/Self-Funded Private Employer Opt-In

Following the decision of the U.S. Supreme Court in *Gobeille v. Liberty Mutual* on March 1, 2016, the New Hampshire Insurance Department (Department) temporarily suspended enforcement of health claims data submission requirements under RSA 420-G:11 and N.H. Code of Admin. R. Ins Part 4000. This suspension of data collection enabled the New Hampshire legislature to take action clarifying the applicability of these provisions to data associated with plans operated by self-funded private employers. In light of *Gobeille*, the legislature enacted 2016 N.H. Laws ch. 250, relative to data submission by insurers.

The new law creates a mechanism for self-funded private employers to instruct their claims administrators using an "Opt-In" form created by the Department to include their data in the New Hampshire Comprehensive Health Information System (NHCHIS) submissions to the state. 2016 N.H. Laws ch. 250, codified at RSA 420-G:11, IV and V. Under the new law, the Department initiated rulemaking to create the Opt-In form, and on November 17, 2016, Ins Part 4005.03, Opt-In by Self-Funded Private Employers, took effect. Accordingly, the Department will now resume enforcement of the NHCHIS data submission requirements under RSA 420-G:11.

Under the newly adopted rule, health care claims data for each self-funded private employer that directs the submission of its data shall be included as part of the carrier's or third-party administrator's data submission as indicated on the "NHID Opt-In Form" for that employer. For current clients, Ins 4005.03 requires that each third-party administrator or carrier providing claims administration services to any self-funded private employer that maintains a business location in New Hampshire, including a branch location, shall, within 60 days of the rule's effective date, present to each self-funded employer a copy of the "NHID Opt-In Form" for purposes of determining whether the employer directs the carrier or third-party administrator to submit its health care claims data pursuant to Ins 4000.

A carrier whose submission includes all relevant data under Ins 4000, without regard to whether the data relate to a self-funded private employer, shall not be required to comply with Ins

4005.03 paragraphs (a) through (d). Also, the types of employers listed in RSA 420-G:11, IV shall not be considered self-funded private employers under this section, and the "NHID Opt-In Form" shall not be presented to any such employer.

Submission of files will be accepted immediately. All outstanding files must be submitted upon completion of the requirements detailed in Ins 4005.03. Data files not submitted will be considered past due 60 days after the effective date of the rule.

Legal questions regarding this bulletin should be directed to Jennifer Patterson, Health Policy Legal Counsel at jennifer.patterson@ins.nh.gov or by phone at (603) 271-2105. Questions related to data submission should be directed to Maureen Mustard, Director of Healthcare Analytics, at maureen.mustard@ins.nh.gov or by phone at (603) 715-6702.