




**THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

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**BULLETIN
Docket No.: INS-17-027-AB**

TO: All Health Insurance Companies
FROM: Roger A. Sevigny
Insurance Commissioner 
DATE: June 2, 2017
RE: Product Discontinuance v. Market Withdrawal

The purpose of this bulletin is to clarify existing consumer protections and to provide carriers offering health insurance guidance relative to the differences between product discontinuance and full market withdrawal under New Hampshire law.¹ Health coverage in New Hampshire is guaranteed renewable. See generally RSA 420-G:6. There are separate exceptions to the guaranteed renewability requirement for product discontinuance (RSA 420-G:6, VI) and market withdrawal (RSA 420-G:6, VII). Each exception specifies the steps a carrier must take to ensure consumers have time to obtain other coverage, as well as to allow regulators and competitors to respond to a market withdrawal.

New Hampshire's product discontinuance exception to guaranteed renewability specifies that a carrier that "decides to discontinue a particular type of health coverage offered in individual, large employer or small employer market" must, among other requirements, provide "at least 90-days notice of such discontinuation to each individual or employer with such health coverage and to all covered persons." RSA 420-G:6, VI. Under New Hampshire law, a carrier discontinuing only a particular product or "type" of coverage must offer each individual or employer with discontinued coverage "the option to purchase any other health coverage currently being offered" by the health carrier in the relevant market. RSA 420-G:6, VI(b). This "option to purchase" a different type of coverage within the same market may not discriminate on the basis of claims experience or health status. See RSA 420-G:6, VI(c) and (d).

Separate requirements apply when a health carrier decides to discontinue *all* of its health coverage in a particular market. In that instance, the carrier "must provide at least 180-days notice of such discontinuation to the commissioner, to each individual or employer with such health coverage and to all covered persons." RSA 420-G:6, VII. A carrier that discontinues all coverage in a particular market "may not renew any health coverages issued, or delivered for issuance, in such discontinued market or markets . . ." RSA 420-G:6, VII(a). A carrier that is discontinuing health coverage in a particular market under RSA 420-G:6, VII, is barred from reentering that market for five years from the date of the

¹ Requirements also exist under federal law, see 45 CFR §147.106(c) and (d), and 45 CFR §148.122(d) and (e).

discontinuance,. The commissioner may subsequently waive or reduce the five year period for good cause shown. RSA 420-G:6, VII(b).

In order to comply with New Hampshire law regarding product discontinuance, and to avoid triggering the provisions of RSA 420-G:6, VII (including those barring market reentry) , a carrier must offer at least one plan in the applicable market that would be open to *any enrollee* in the discontinued coverage. **A carrier not offering any coverage that is available for purchase to all of that carrier's current enrollees will be considered to be discontinuing coverage in the applicable market and will be responsible for complying with all requirements of RSA 420-G:6, VII.** However, so long as the company offers at least one plan which would be available for purchase by *any* individual or group currently enrolled in that carrier's coverage, discontinuation of other plans will be considered product discontinuances rather than a market withdrawal.

For example, a carrier discontinuing all coverage except coverage in a closed block of business, such as "grandfathered" plans, will not be in a position to comply with the requirements of RSA 420-G:6, VI with respect to offering "the option to purchase any other health coverage currently being offered" to enrollees in a discontinued plan. Similarly, a carrier discontinuing all coverage except "catastrophic coverage" will not be in a position to comply with the requirements of RSA 420-G:6, VI because catastrophic coverage is not generally available, rather, only certain individuals are eligible to purchase catastrophic coverage. See 45 CFR §156.155(a)(5). In addition, because under RSA 420-G:6, VII(a) the carrier is considered to be withdrawing from the market, no coverage in that market (e.g. grandfathered plans or catastrophic coverage) could be renewed.

In accordance with Ins 401.13(a) carriers providing notice for either product discontinuance or product withdrawal must file final drafts of such notices at least ten days prior to the required date of notice to the Department for review and approval. Notices are to be submitted to the attention of Maureen Belanger at Maureen.Belanger@ins.nh.gov

Questions related to this Bulletin should be directed to Michael Wilkey, Director of Life, Accident and Health, at Michael.Wilkey@ins.nh.gov or by phone at (603) 271-3218, or Jennifer Patterson, Health Policy Legal Counsel, at Jennifer.Patterson@ins.nh.gov or by phone at (603) 271-2105.