

Arkansas Insurance Department

Mike Beebe
Governor



Jay Bradford
Commissioner

March 15, 2013

BULLETIN NO.: 7- 2013

TO: ALL ACCIDENT & HEALTH INSURERS, HEALTH MAINTENANCE ORGANIZATIONS, HOSPITAL MEDICAL SERVICE CORPORATIONS, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, TRADE ORGANIZATIONS AND OTHER INTERESTED PARTIES

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: IMPLEMENTATION OF TITLE I, SUBTITLE C AND D OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT, PUBLIC LAW NO. 111-148, AS AMENDED BY THE HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010, PUBLIC LAW NO. 111-152 ("PPACA") FOR NON-GRANDFATHERED INDIVIDUALLY UNDERWRITTEN INSURANCE POLICIES AND HEALTH PLANS ON JANUARY 1, 2014

On January 1, 2014, provisions set out in Title I, Subtitles C and D of the Patient Protection and Affordable Care Act, Public Law No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law No. 111-152 ("PPACA") become effective. These provisions will require all non-grandfathered insurance policies health plans, those issued after March 23, 2010, to provide essential health benefits (PHSA §2707(a); PPACA §1302(a)), to limit cost sharing (PHSA §2707(b); PPACA §1302(c)), to have premiums at near community rate levels (PHSA §2701), to be guaranteed available (PHSA §2702), to be guaranteed renewable (PHSA §2703), and to be issued without consideration of pre-existing conditions or medical underwriting (PHSA §§2704 and 2705).

The purpose of this bulletin is to remind all insurance companies, health maintenance organizations and hospital medical service corporations ("carriers") issuing non-grandfathered individually underwritten policies or plans that, barring amendments to PPACA or its implementing regulations, these policies and plans will have to be brought into compliance with the PPACA requirements on their policy or plan years beginning on or after January 1, 2014.

Because of the complexity of applying the Public Health Services Act provisions that PPACA requires to become effective on January 1, 2014, it may be problematic for some carriers to simply amend non-grandfathered individually underwritten policies and health plans to incorporate the requirements set out in these provisions. Unlike the PPACA near term changes that became effective on September 23, 2010, policy amendments for the 2014 requirements may

need to be tailored to fit each individual health plan because policyholders will be different ages, will have unique cost sharing obligations, will be uniquely impacted by premium rating requirements and will want to choose among essential health benefit plans.

Our analysis indicates there are four potential options for bring these non-grandfathered plans into compliance.

Option A. Carriers may terminate the non-grandfathered policies by giving 90 days notice as required by A.C.A. §23-79-119(c)(3). The insurer would then offer each individual a new policy that fully complies with the ACA market reforms. For carriers that choose this option, notice to the policyholders must include information as to whether replacement policies will be offered inside or outside the Exchange, or both. Additionally, such notice should address the fact that policies sold inside the Exchange may be eligible for subsidies, while those policyholders purchasing a replacement policy outside the Exchange will not be eligible for subsidies.

Option B. Carriers may amend each policy to comply with the ACA market reforms and issue these amendments prior to 1/1/2014 for 1/1/2014 effective dates.

Option C. Carriers may file with the Department an amendment to current policies to create a plan year that ends December 30 of each year. Therefore, the non-grandfathered plans would not be required to comply with the ACA market reforms until 12/31/2014. The carrier would then amend the old policies to comply with the ACA and issue the amendments prior to the 2015 plan year or carrier could terminate the policies at the end of the plan year in 2014 with proper notice. If the old policy is amended, the individuals cannot enroll in an exchange plan at the renewal. Individuals can only enroll in the exchange during open enrollment or under special enrollment provisions. They could renew during the calendar year (2014) then enroll in an exchange product during the next open enrollment. Again, to ensure that policyholders do not miss out on the possibility receiving subsidies on the Exchange in 2014 it should be made clear to them via written notification that remaining on the grandfathered plan through 12/31/2014 will foreclose their opportunity to receive subsidies.

Option D. Carrier may exit the individual market effective 1/1/2014. In order to comply with A.C.A. §23-79-119(c)(4) 180 days notice of discontinuance must be given. For carriers withdrawing from the market we strongly recommend that you ensure that policies include a provision reflecting the 180 day notice withdrawal requirement. For policies that do not include such a provision a policy amendment should be filed with the Department.

Regardless of the method that a carrier chooses to bring its non-grandfathered individually underwritten insurance policies and health plans into compliance with the January 1, 2014 requirements of PPACA, the Department urges all carriers to begin making plans to bring these policies and health plans into compliance and to begin notifying policyholders and contract holders of these insurance policies and health plans of the coming changes in their coverage so

that the disruption in the insurance marketplace brought about by the January 1, 2014 PPACA requirements can be diminished. Additionally, at the appropriate time, please notify the Department of your plans in this regard and provide us with sample notice letters that will be going out to policyholders. Such information and notice letters will be accepted by the Department on an informational basis.



JAY BRADFORD
INSURANCE COMMISSIONER
STATE OF ARKANSAS

3-18-13
DATE