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BULLETIN NO: 09-02

TO: ALL HOSPITAL, MEDICAL AND HEALTH SERVICE CORPORATIONS,
INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS
DELIVERING OR ISSUING HEALTH BENEFITS PLANS IN NEW JERSEY

FROM: STEVEN M. GOLDMAN, COMMISSIONER

RE: DEPENDENT UNDER 31 (P.L. 2008, c. 38, ss. 29 THROUGH 34)

On January 12, 2009 the Department issued Bulletin No. 09-01 on the subject referenced above. The first sentence of that Bulletin contained a typographical error mistakenly indicating that the general effective date of P.L. 2008, c. 38 was January 5, 2008. The correct date is indicated below. All recipients of this Bulletin should discard Bulletin 09-01 and be guided by this corrected Bulletin. The attachments to Bulletin 09-01 remain unchanged and are also attached hereto.

On July 8, 2008, P.L. 2008, c. 38 (Chapter 38) was enacted, with a general effective date of January 5, 2009. Among other actions, Chapter 38 amended P.L. 2005, c. 375 (Chapter 375), which had established the Dependent Under 30 Law.¹ This bulletin explains the Department of Banking and Insurance's (Department) expectations for compliance with Chapter 38.

Background – Chapter 375 (Dependent Under 30)

Chapter 375 allows an "over-age" young adult – someone who is no longer eligible to be covered as a dependent child under a parent's group health benefits plan – to elect upon age-out or during an open enrollment period to continue to be covered under the group's health benefits plan until his or her 30th birthday, if other eligibility standards are met. The Department issued multiple bulletins providing guidance to carriers on implementation of the Dependent Under 30 law, and revisions to the group health insurance application form (HINT form).² The Department posted consumer information at <http://www.state.nj.us/dobi/dependentsunder30.htm>, to help interested parties navigate the process.

¹ Chapter 375, and the amendments of interest thereto made by Chapter 38 are codified at N.J.S.A. 17:48-6.19, 17:48A-7.13, 17:48E-30.1, 17B:27-30.5, 17B:27A-19.16, and N.J.S.A. 26:2J-10.3.

² Specifically, see bulletins 06-06, 06-11, 06-12, 06-13, 06-14, 07-07 as well as Bulletin 07-17, all of which are available on the Department's web site at <http://www.state.nj.us/dobi/legsregs.htm>.

Chapter 38 – Dependent Under 31

Chapter 38 requires the Department to revise some of its guidance to carriers as well as the information heretofore provided to consumers. Chapter 38 makes two significant changes to Chapter 375. Chapter 38 extends the age for eligibility through a young adult's 31st birthday; thus, the Department now refers to it as the Dependent Under 31 (DU31) election. Chapter 38 also removes the requirement that a young adult have aged-out from a group health benefits plan to be eligible to make a DU31 election, allowing instead for proof of prior creditable coverage or receipt of benefits. However, the latter change has multiple effects upon the implementation and administration of Chapter 375.

Change in Age of Eligibility from 30 to 31 Years Old

As of January 5, 2009, eligible over-age young adults may remain on, or apply to become covered under a parent's group health benefits plan until the young adult's 31st birthday. A young adult who had his or her 30th birthday before January 5, 2009, may apply as of January 5, 2009, and any date thereafter prior to his or her 31st birthday, to make a DU31 election. Similarly, currently covered young adults who turn 30 during 2009 should not be expected to re-elect DU31 continuation. Because implementation of this aspect of Chapter 38 is an administrative function only, the Department encourages all carriers to maintain 30 year old young adults under coverage seamlessly until a young adult's 31st birthday, assuming the young adult meets all other eligibility requirements during that time period.

Change to Any Creditable Coverage

Several significant impacts result from the substitution of the group-health-benefits-plan-issued-in-New-Jersey age-out requirement with a requirement that the young adult provide proof of prior creditable coverage (or receipt of benefits) as a condition of DU31 eligibility.

First, because prior coverage under a group health benefits plan and age-out are no longer conditions of eligibility, the scope of young adults potentially eligible to make a DU31 election is increased. Chapter 375 disqualified a young adult who aged out of a self-funded group health plan, health insurance issued in another state or country, coverage through Medicaid or NJ FamilyCare, or similar such coverage because none of it constituted a group health benefits plan issued in New Jersey. Chapter 38 merely requires proof of prior creditable coverage (or receipt of benefits). Similarly, Chapter 375 disqualified young adults who, despite previous coverage under a group health benefits plan issued in New Jersey, never had the opportunity to age out of it. Chapter 38 permits such a young adult to qualify to make a DU31 election, assuming all other eligibility standards are met.

Second, there is no longer a seminal qualifying event that defines when a young adult may make a DU31 election. Certainly, a large number of young adults covered as eligible dependent children under creditable coverage (issued in New Jersey or otherwise) will reach the limiting age for the creditable coverage, and will then seek to make a DU31 election under that coverage or a group health benefits plan issued in New Jersey, just as occurs now. However, there are a number of young adults who will have had, now and in the future, prior creditable coverage from which they never aged-out who, at any time after January 5, 2009, will be eligible as a matter of law to make a DU31 election under a parent's group health benefits plan. To

assure equal treatment of otherwise similarly-situated eligible young adults, the Department believes carriers should permit DU31 elections on a continuous basis on or after January 5, 2009, references to possible open enrollment periods in the statutes notwithstanding.

Third because of continuous open enrollment, the Department believes it is reasonable for a carrier to apply preexisting condition limitation periods set forth in a group health benefits plan to young adults who make a DU31 election. However, as required by both federal and state law, carriers must reduce (or eliminate) any preexisting condition limitation period commensurate with the amount of creditable coverage (including receipt of benefits) that a young adult has without any significant breaks in coverage. As always, a significant break in coverage for the large group market is 63 days, but for the small group market is 90 days.

Fourth, because it is reasonable and appropriate to make a DU31 election only if a young adult is no longer eligible for coverage as a dependent child, carriers should consider whether an individual making a DU31 election qualifies as a dependent child under the terms of the policy in which the DU31 election is sought. Carriers need not give effect to the DU31 election unless the young adult is too old to qualify as a dependent child under the terms of the policy in which the DU31 election is sought.

Receipt of Benefits

Chapter 38 permits a young adult to provide a certificate of creditable coverage or proof of "receipt of benefits." The Department believes proof of receipt of benefits is merely an alternative proof of having existing coverage or having had prior coverage for which a certificate of creditable coverage is not required legally to be issued: for instance, because coverage was provided through a national program of a foreign country. The young adult should not be required to provide proof of having actually received some level of benefits as a result of having incurred health service-related charge(s), but only to provide proof of eligibility for such benefits.

HINT Form

Modifications have been made to the HINT form and to the HINT Supplemental Form to reflect the Chapter 38 amendments. The revised forms are attached. Carriers may elect to use the supplemental form (as revised) for purposes of effecting a DU31 election until revisions to the HINT form are adopted.

The Department has posted new information, including revised questions and answers, at http://www.state.nj.us/dobi/division_consumers/du31.html. If, after reviewing this bulletin and the Department's online information, you still have questions, contact one of the following:

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January 23, 2009

Date

/s/ Steven M. Goldman

Steven M. Goldman

Commissioner

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