

NEW JERSEY
INDIVIDUAL HEALTH COVERAGE PROGRAM

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ADVISORY BULLETIN
04-IHC-01

January 26, 2004

To: IHC Program Members and Interested Parties

From: Wardell Sanders, Executive Director

Re: Second Bulletin on HIPAA Alternative Mechanism Compliance – Residency

Section 2744(b)(1)(C) of Title XXVII of the Public Health Service (PHS) Act requires that, every three years, each State provide the Federal government with information necessary to review its "alternative mechanism," the term under the PHS Act for a mechanism designed to serve the health insurance needs of "federally defined eligible individuals."¹ As part of its recent review of New Jersey's filing under this law, the Centers for Medicare and Medicaid Services (CMS) of the Federal Department of Health and Human Services has asked that New Jersey regulators address two issues which the Board discussed in Bulletin 03-IHC-01 which addressed the definition of "creditable coverage" and screening for federally defined eligible individuals. CMS has asked New Jersey regulators to address an additional issue regarding the six-month residency requirement for eligibility for individual coverage.

The State's Individual Healthcare Reform Act (IHC Act), N.J.S.A. 17B:27A-2 et

¹ "Federally defined eligible individual" means an eligible person: (1) for whom, as of the date on which the individual seeks coverage under P.L.1992, c. 161 (C.17B:27A-2 et seq.), the aggregate of the periods of creditable coverage is 18 or more months; (2) whose most recent prior creditable coverage was under a group health plan, governmental plan, church plan, or health insurance coverage offered in connection with any such plan; (3) who is not eligible for coverage under a group health plan, Part A or Part B of Title XVIII of the Social Security Act (42 U.S.C. § 1395 et seq.), or a State plan under Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.) or any successor program, and who does not have another health benefits plan, or hospital or medical service plan; (4) with respect to whom the most recent coverage within the period of aggregate creditable coverage was not terminated based on a factor relating to nonpayment of premiums or fraud; (5) who, if offered the option of continuation coverage under the COBRA continuation provision or a similar State program, elected that coverage; and (6) who has elected continuation coverage described in (5) above and has exhausted that continuation coverage. N.J.S.A. 17B:27A-2.

seq., defines “eligible person” as “a person who is a resident who is not eligible to be covered under a group health benefits plan, group health plan, governmental plan, church plan, or Part A or Part B of Title XVIII of the Social Security Act (42 U.S.C. § 1395 et seq.).” The IHC Act defines "resident" as a person "whose primary residence is in New Jersey and who is present in New Jersey for at least six months out of the calendar year, or, in the case of a person who has moved to New Jersey less than six months before applying for individual health coverage, who intends to be present in New Jersey for at least six months of the calendar year."

CMS has advised State regulators that a Federal regulation, 45 CFR 148.128, requires an alternative mechanism to offer insurance coverage to all federally defined “eligible individuals” without any pre-existing condition exclusions, and that a requirement for a *length of residency* is not permitted for such individuals. Further, the Federal law preempts any State law that prevents the application of a federal requirement. As a result, while a New Jersey individual market carrier must evaluate whether an applicant is a resident of New Jersey (e.g., by requesting a driver’s license), the carrier may not require a specific length of stay such as six months.

The Federal regulation noted above does not apply to applicants who are not federally defined “eligible individuals.” New Jersey individual market carriers shall continue to follow State law requirements, which include the six-month residency requirement, for eligibility for individual coverage for applicants that do not meet the definition of a “federally defined eligible individual,” see N.J.S.A. 17B:27A-2. It is important, however, that a carrier determine an applicant’s status as a federally defined “eligible individual” before determining which residency standard applies.

The IHC Board intends to promulgate regulations to reflect the guidance provided in this bulletin.

This bulletin can also be found at the Department of Banking and Insurance web site at:
www.njdoib.org