

NEW JERSEY
INDIVIDUAL HEALTH COVERAGE PROGRAM

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ADVISORY BULLETIN 97-IHC-03

Date: June 25, 1997

To: IHC Member Carriers That Offer the Standard Health Benefits Plans and All Interested Parties

From: Wardell Sanders, Interim Executive Director

RE: ADMINISTRATIVE COMPLIANCE WITH THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

On August 21, 1996, the President signed into law the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. 104-191. HIPAA amended the Public Health Service Act ("PHS Act"), in part, to improve access to individual health insurance coverage for certain eligible individuals who previously had group coverage, and to guarantee the renewability of all coverage in the individual market. The federal government has also issued interim rules to implement HIPAA (62 Fed. Reg. 16,894 (1997)).

On March 31, 1997, Governor Whitman submitted to the federal government a Notice of Intent to Enact an Acceptable Alternative Mechanism as permitted by HIPAA. Under HIPAA, states are permitted to implement an "alternative mechanism" to ensure that *federally* defined eligible individuals have access to individual health insurance coverage without preexisting condition limitations. As of the date of this bulletin, the federal government has not made a determination on New Jersey's alternative mechanism filing. Pursuant to HIPAA the guaranteed renewability requirements of the federal law are effective on July 1, 1997. Carriers should be aware that the federal regulations have made clear that Medicare eligibility is not a basis for nonrenewal of an individual health benefits plan.

Although New Jersey's individual market reforms generally exceed the requirements of HIPAA, there will have to be some minor amendments to the Individual Health Insurance Reform Act ("IHC Act"), N.J.S.A. 17B:27A-2 et seq., so that State law is consistent with the requirements of HIPAA. The New Jersey Individual Health Coverage ("IHC") Program Board anticipates that State legislative changes will be made

to N.J.S.A. 17B:27A-2 et seq. (“IHC Act”) to conform the IHC Act with HIPAA. The IHC Board plans to propose changes to its standard plans to conform with HIPAA.

Carriers in New Jersey’s individual market are each responsible for compliance with federal law. Where federal law preempts portions of State law (which includes the IHC Act, regulations and standard health benefits plans), carriers will be expected to administratively comply with federal law. Carriers are not permitted to modify the standard health benefits policy forms to accommodate the requirements of HIPAA until authorized by the IHC Board to do so. The IHC Board recommends that carriers provide notice to the applicant or policy or contract holder of the modifications to the administration of the health benefits plans that are required to conform the plan with federal law.

The standard IHC policy forms contain a “Conformity with Law” provision which alerts policy or contract holders that the plans must be administered in conformity with all applicable federal and State law. To ensure timely compliance with applicable federal law, the IHC Board will not require carriers to make filings outlining their interpretation of the requirements of the federal law with the Board as is suggested by the “Conformity with Law” provision in the contract. Nevertheless, carriers must comply with all applicable law.