STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE

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BULLETIN 97-09

To: All Insurance Producers, Insurance Companies, Hospital or Medical Service Corporations, and Health Maintenance Organizations Writing Health Insurance in the State of Alaska

Re: Notice of Changes in Alaska Statutes Relating to the Health Insurance Portability and Accountability Act of 1996 (HIPAA)

This bulletin outlines the major changes to the Alaska Insurance Code that respond to the new federal requirements for health insurance enacted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Alaska's approach to these requirements is set out in AS 21.54, AS 21.55, and AS 21.56. Although interim federal regulations have been issued implementing HIPAA, final federal regulations will not be promulgated for several months and may materially change from the interim regulations. The Division of Insurance will issue future informational bulletins as necessary to address important state or federal regulatory or legislative developments related to HIPAA.

Applicability and Scope

All health care insurers are subject to federal and state HIPAA provisions. Health care insurers include insurance companies, hospital and medical service corporations, fraternals, HMOs, and MEWAs (see AS 21.54.500(27)).

The group market for health insurance is defined to include employers with two or more employees. The group market provisions are in AS 21.54, AS 21.56, and AS 21.86. Note in particular AS 21.12.050, AS 21.54.500(15) - (17), (19), and (28) that define health care insurance, health benefit plans, health care insurance plans, health care insurers, and large and small employers.

The individual market for health insurance includes all coverage offered to an individual outside of the group market. The individual market reforms are in AS 21.55. Individual guaranteed renewability provisions are in 42 U.S.C. 300gg-42 of the federal law and will be enforced in Alaska.

The HIPAA provisions for both the individual and group markets do not apply to excepted benefit plans – generally supplemental or limited benefit plans (see AS 21.54.160 for a complete description).

Effective Dates

With the limited exception in regard to mental health benefit parity, the group market provisions summarized below become effective for plan years beginning on or after July 1, 1997. A plan year is defined in the federal interim regulations as the plan year designated in the policy. In most cases, this means that the group provisions become effective for an existing group plan upon renewal on or after July 1, 1997.

The individual market provisions become effective on or after July 1, 1997.

Filing Requirements

Individual Policies

All form filings for individual health insurance coverage must incorporate the guaranteed renewability provisions as required under 42 U.S.C. 300gg-42 of the federal law. These provisions apply to all in force policies as well as to new issues on or after July 1, 1997. Existing policies must be administered according to these provisions on or after July 1, 1997, regardless of whether or not the provisions have been incorporated into the policies as of July 1, 1997. All individual policy forms must be amended to conform to the guaranteed renewability provisions and filed with the division for approval before January 1, 1998.

Overinsurance and eligibility for Medicare may no longer be used to terminate or nonrenew a policy, insurers may want to add a provision to their policy forms that reduces benefits to the extent they are provided under Medicare or otherwise. If an insurer adds such a provision to the revised contract, it must be filed for approval with the division in conjunction with the amendment to conform to the guaranteed renewability provisions as stated above.

Group Insurance Policies

All form filings for group health insurance coverage must incorporate the required HIPAA provisions as outlined below and as prescribed in AS 21.54, 55, and 86.

Existing contracts must be administered in accordance with these group provisions at plan renewal regardless of whether or not the provisions have been incorporated into the existing contracts as of July 1, 1997. Existing contracts must be amended to conform with the HIPAA provisions and filed for approval with the division before January 1, 1998.

Major Legislative Changes

Small Employer Market

Definition of a Small Employer

A small employer is now defined as an employer with an **average** of at least two but not

more than 50 employees on business days during the year and that employs at least two employees on the first day of a health benefit plan year. Note that there is no longer a requirement that the majority of the employees be employed in Alaska.

Preexisting Condition Provision

Pregnancy and genetic information in the absence of the condition can no longer be considered preexisting conditions. Also, a prudent person requirement for determining whether a condition was preexisting is no longer allowed.

Credit for Prior Coverage

Qualifying previous coverage and rules for reducing the preexisting condition waiting period for such coverage have been significantly modified. Qualifying previous coverage is now termed creditable coverage and is defined in AS 21.54.500(7). Although the definition of creditable coverage does not include individual health care insurance plans, federal law requires that they be considered creditable coverage and the federal definition will be enforced in Alaska. The rules for determining the period of creditable coverage are provided in AS 21.54.120. The rules for reducing the preexisting condition waiting period are provided in AS 21.54.110. The most significant change is in the rules for counting a period of creditable coverage which must now use the federally defined standard method or an allowed alternative method as clarified by federal regulations.

Guarantee Issue

AS 21.56.140 now requires that small employer insurers guarantee issue **all products** they actively market to small employers in the state and must also continue to offer the Basic and Standard plans. Insurers are not required to offer a plan that is sold only to association plans to small employers that are not members of the association. Also, the exemption for an employer/employee that is out of the insurer's geographic service area has changed and is specific to network plans. A correction that should be noted is in AS 21.56.140(a) where the phrase "all health care insurance plans the small employer actively markets" should be "all health care insurance plans the small employer **insurer** actively markets."

Guaranteed Renewability

Insurers must continue to guarantee renewal of all health care insurance plans. Nonpayment of premiums, fraud, failure to comply with minimum participation and contribution requirements, and electing to nonrenew all health care insurance plans are still exceptions to the guaranteed renewability requirement. However, there are now specific rules for discontinuing the offer of **particular** health plans and for discontinuing the offer of **all** health plans to small employers. Movement outside the insurer's service area, and cessation of association membership are new exceptions to the guaranteed renewability requirements.

The law specifically allows an insurer to modify a small employer's plan at renewal on a uniform basis for all small employers with the same plan. This is not allowed for large

employer plans.

Note that there are now special guaranteed renewability provisions for Multiple Employer Welfare Arrangements in AS 21.54.140.

Large Employer Market

Health care insurance plans sold to large employer groups are subject to the same preexisting condition, credit for prior coverage, and guaranteed renewability provisions as described above for small employers. **These are new requirements for large employer groups** and are in AS 21.54.

Mental Health Parity

AS 21.54.150 establishes rules for the provision of mental health benefits for large employer health plans. If compliance with the rules would result in an increase in cost of at least 1 percent for the employer, then the requirements will not apply. This provision does not become effective until January 1, 1998.

Large and Small Employer Market

Large and small employer health care insurance plans may not establish rules for eligibility including continued eligibility and waiting periods under a health plan for an individual or dependent of an individual based on a health status factor as defined in AS 21.54.100(a). As a consequence of this provision, **"actively at work" requirements will no longer be permitted to the extent they violate this requirement**.

AS 21.54.100(b) states that insurers may not require individuals as a condition of enrollment to pay a premium, contribution or policy fee greater than the premium, contribution or policy fee for similarly situated individual enrolled in the plan on the basis of a health status factor.

Individual Market

In order to implement the portability provisions required under HIPAA, Alaska has modified the eligibility requirements under the Comprehensive Health Insurance Association (CHIA) to allow federally defined eligible individuals guaranteed health insurance coverage through the CHIA. Since Alaska provides that federally defined eligible individuals are guaranteed coverage through the CHIA, **insurers may continue to underwrite individual health insurance policies in Alaska**.

Federally defined eligible individuals are defined in AS 21.55.500(16) to be those individuals with at least 18 months of creditable coverage with their **most recent coverage from a group plan**, who are not eligible for other health care insurance coverage, whose most recent coverage was not terminated due to nonpayment of premium or fraud, and who have exhausted any available COBRA coverage. A federally defined eligible individual does not have to satisfy a preexisting condition waiting period, nor do they need to meet the normal 12

month residency requirement in order to be eligible for coverage under the CHIA. **Note that if an individual is moving to CHIA from an individual health insurance policy instead of a group plan, the individual would not be considered a federally defined eligible individual**.

Under 42 U.S.C. 300gg-42 of the federal law, **all** individual health insurance plans are guaranteed renewable subject to certain exceptions. These provisions are similar to the guaranteed renewability provisions in the group market. Insurers may modify on a policy form basis the health care insurance coverage if modification is done on a uniform basis for all individuals with that policy form.

Required Certifications

As required under AS 21.54.120, health care insurers must provide a certification of coverage upon cessation of coverage or upon request by the individual. These certifications are intended to enable an individual to satisfy all or a portion of preexisting condition exclusions by receiving credit for previous creditable coverage. The certifications must comply with federal regulations, including form, content, and delivery.

If you have questions regarding the information provided in this bulletin, SB 104, or the federal HIPAA and regulations, please contact Katie Campbell at:

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