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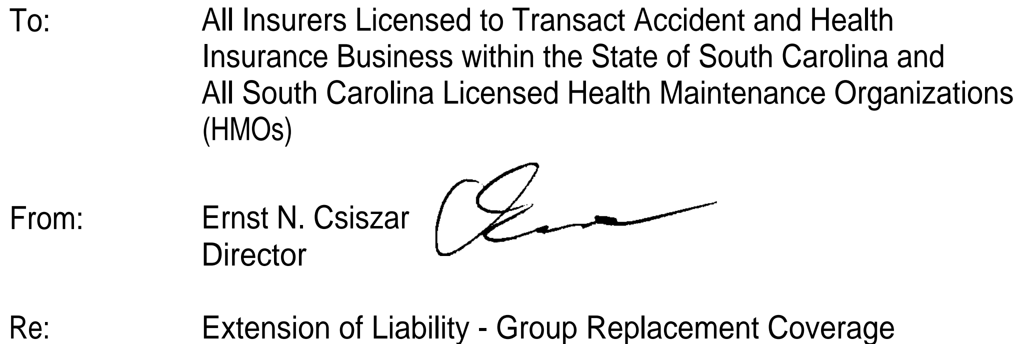

To: All Insurers Licensed to Transact Accident and Health Insurance Business within the State of South Carolina and All South Carolina Licensed Health Maintenance Organizations (HMOs)

From: Ernst N. Csiszar
Director

Re: Extension of Liability - Group Replacement Coverage

I. PURPOSE

The purpose of this Bulletin is to clarify the interpretation of the Department's position as it relates to extension of liability for group health plans that are subject to The Health Insurance Portability and Accountability Act of 1996 (HIPAA). This position has been the interpretation of the Department of Insurance since the implementation of HIPAA effective July 1, 1997. Questions have been raised relating to the possibility of "double coverage" for a totally disabled individual who is covered under extension of liability and enrolls in a succeeding carrier's plan as a result of the application of the non-discrimination provisions of HIPAA.

II. APPLICABLE PROVISIONS OF SOUTH CAROLINA LAW

Sections 38-71-760 (f) and (i) require group contracts to provide a reasonable provision for extension of liability in the event of total disability at the date of discontinuance of the group policy or contract. The provision is considered reasonable if it provides an extension for at least 12 months.

Section 38-71-760 (m) (1) states that "Each person who is eligible for coverage in accordance with the succeeding carrier's plan of benefits with respect to classes eligible and actively at work and nonconfinement rules must be covered by that carrier's plan of benefits." In addition, Section 38-71-760 (m) (2) states, in pertinent part, "Each person not covered under the succeeding carrier's plan of benefits in accordance with item (1) of this subsection (m) nevertheless must be covered by the succeeding carrier in accordance with the following rules if the individual was validly covered, including benefit extension, under the prior plan on the date of discontinuance and if the individual is a member of the class of individuals eligible for coverage under the succeeding carrier's plan." Further, Section 38-71-760 (m) (2) (A) states that "The minimum level of benefits to be provided by the succeeding carrier

must be the applicable level of benefits of the succeeding carrier's plan reduced by any benefits payable by the prior plan."

Thus, under current SC law, carriers are required to provide an extension of liability for individuals who lose group health coverage and who are totally disabled at the time that there is a loss of group health coverage. The prior carrier must provide coverage until the earlier of: twelve months from the date of coverage termination, the date maximum benefits have been paid, or the date the individual is no longer totally disabled. The minimum level of benefits to be provided by the succeeding carrier must be the applicable level of benefits of the succeeding carrier's plan reduced by any benefits payable by the prior plan.

Bulletin 97-1, relating to SC's HIPAA compliance legislation, indicates that "actively at work" or "non-confinement" provisions may not contain language which establishes rules for eligibility, including continued eligibility, of any individual to enroll under the terms of the plan based on a health status-related factor. The list of health status-related factors includes disability. Hence, it could be construed that the provisions of Section 38-71-760 (m) (2) no longer apply since the individual could no longer be excluded from coverage by an "actively at work" provision. If this interpretation were made, the person would be eligible for "double coverage." This is clearly not the intent of South Carolina law nor HIPAA.

III. SOUTH CAROLINA DEPARTMENT OF INSURANCE INTERPRETATION

South Carolina's interpretation of the relationship between HIPAA's non-discrimination provisions and "actively at work" and "non-confinement" provisions is as follows:

> An "actively at work" or "non-confinement" provision may not contain language which establishes rules for eligibility, including continued eligibility, of any individual to enroll under the terms of the plan based on the health status-related factors detailed within Section 38-71-860. In the event that an individual is covered under an extension of liability provision in accordance with Sections 38-71-760 (f) and (i), the individual must be enrolled in the succeeding carrier's plan, if the individual is a member of the class of individuals eligible for coverage under the succeeding carrier's plan. In addition, the provisions of Section 38-71-760 (m) (2) apply; i.e., the minimum level of benefits to be provided by the succeeding carrier must be the applicable level of benefits of the succeeding carrier's plan reduced by any benefits payable by the prior carrier.

Finally, it is the position of this Department that:

1) Extension of liability must be provided whenever coverage is terminated for a covered individual, and not just when the entire group policy terminates.

2) Extension of liability applies to the <u>disabling condition only</u> and <u>no premium may be charged.</u>

3) Carriers may establish procedures for determining total disability.