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BULLETIN NO. 20-13

TO: **ALL HEALTH CARRIERS, DENTAL SERVICE CORPORATIONS AND DENTAL BENEFITS ORGANIZATIONS ISSUING EMPLOYER HEALTH AND DENTAL BENEFITS PLANS TO LARGE GROUP EMPLOYERS (51+) IN THIS STATE AND ALL LICENSED BROKERS SELLING LARGE GROUP HEALTH AND DENTAL BENEFITS PLANS IN THIS STATE**

FROM: **MARLENE CARIDE, COMMISSIONER**

RE: **GUIDANCE CONCERNING CIRCUMSTANCES RELATED TO THE COVID-19 PANDEMIC (LARGE EMPLOYER MARKET)**

On March 9, 2020, Governor Phil Murphy declared a state of emergency and public health emergency through the issuance of Executive Order No. 103 to contain the spread of the Coronavirus ("COVID-19") pandemic and, on April 7, 2020, issued Executive Order No. 119 ("EO 103" and "EO 119") declaring that the Public Health Emergency declared in Executive Order No. 103 continues to exist. On April 9, 2020, Governor Murphy also issued Executive Order No. 123 ("EO 123"). EO 123 directed carriers to refrain from cancelling any policy or contract for nonpayment for a period of time, to exercise appropriate forbearances on collection documentation, to amortize any unpaid payments, and to refrain from seeking recoupment of any unpaid claims paid during the emergency grace period. The Department of Banking and Insurance ("Department") is issuing this Bulletin to provide guidance to all health carriers, dental service corporations and dental benefits organizations ("carriers") issuing large group employer health benefits plans in this State as well as brokers selling such plans regarding circumstances related to the COVID-19 pandemic.

The following guidance is effective immediately and continues for the duration of the state of emergency and public health emergency declared pursuant to EO 103 and EO 119. The Department will continue to review this guidance during the duration of EO 103 and EO 119 to ensure policyholders receive the intended relief.

<u>Circumstances Related to the COVID-19 Pandemic</u>

As required by Executive Order Nos. 104 and 107, many businesses have been required to close. Others are operating with reduced hours and/or reduced services. Many of the businesses are considered large employers, with 51 or more employees. For a variety of reasons associated with the pandemic, many employees currently covered by a large employer health benefits plan are being laid off, furloughed or given reduced work hours. The health coverage of employees no longer working full-time is in jeopardy. The renewal of group policies of employers whose plans are under review for renewal may be threatened.

Carriers currently evaluating large group renewals occurring later this year will need to consider one or more of the following provisions.

Guidance Related to COVID-19

Participation

As a result of furlough, lay-off or reduced hours, some employees may elect COBRA. Some laid-off employees may elect individual coverage through the Marketplace where they qualify for a subsidy. Employers may fail the participation requirement with the result being non-renewal of the large group policy.

Guidance*: Carriers must deem all employers that have policies with anniversary dates occurring during the month of March through the end of the state of emergency period as eligible for renewal. Carriers must rescind termination notices that may already have been sent to employers with anniversary dates occurring during the month of March and through the end of the state of emergency period. Those employers shall be deemed eligible. If a group wishes to terminate its policy the employer must submit a written termination letter to the carrier prior to the renewal date. Carriers must delay renewal reviews as may be necessary during the state of emergency.*

Full-Time

Some employees are working fewer hours per week than the hours required for full-time as stated in the group policy or contract and thus they are ineligible to be covered as employees.

Guidance: *Carriers may relax the full-time requirement to allow continued employee coverage. By relaxing the full-time requirements, the employee may remain covered under the group policy without having to elect COBRA.*

Waiting Period

An employer that lays off one or more employees may seek to re-hire those employees once business resumes operations. Since the employees were terminated from employment, they would be subject to the applicable waiting period.

Guidance: *Carriers are required to waive any applicable waiting period that would apply to employees who were previously laid off as a result of the pandemic and again become full time employees eligible for health insurance under the employer's plan.*

Grace Period

Carriers shall make available an emergency 60-day grace period to any policyholder that has been financially or physically impacted by COVID-19. Also, carriers must provide the emergency grace period to any large employer that provides the carrier with an attestation from a senior financial officer or certified public accountant attesting to the employer's financial hardship caused by COVID-19. The attestation shall only require the employer to indicate that as a result of COVID-19 it is experiencing a financial hardship, therefore making it difficult to pay its premium payments. Carriers may also make the emergency grace period available to any other large employer in the carrier's discretion.

The grace period may be initially applied towards the April or May premium as the policyholder determines and will continue for 60 calendar days from that date. During this emergency grace period, a carrier shall not terminate that policy for nonpayment of premium. Coverage must remain in force and claims must be paid and may not be pended.

If a carrier has already provided a policyholder with a legally required grace period for April 2020 premiums, the time period for which a grace period has already been granted shall be applied toward the emergency grace period. If coverage has been terminated due to nonpayment of premium after April 1, 2020, coverage must be reinstated for the term of the applicable emergency grace period. This 60-day grace period shall only apply to policyholders that were in good standing with their insurance carrier on March 1, 2020 and shall only apply to premiums due after the initial premium has been made to secure coverage.

After the 60-day emergency grace period, a policyholder must be offered the option of amortizing any unpaid premium over the remaining months of the calendar year. For example, if six months are remaining in the calendar year, the policyholder must be given the option to pay the unpaid premium in six installments in addition to the regular monthly premium. If only three months remain on the policy, but 6 months remain in the calendar year, the carrier must allow the policyholder the option to pay the unpaid premium in six installments in addition to the regular monthly premium.

Carriers are directed that they are not to seek recoupment from any policyholder for any claims incurred during this emergency grace period. Carriers shall not report late payments to credit reporting agencies, consistent with this guidance, for policyholders taking advantage of COVID-19-related relief.

Carriers are further directed to, in addition to posting information on the carrier's website, provide each large employer policyholder with an easily readable written description of the terms of the extended grace period offered pursuant to this guidance, which shall be submitted as an informational filing to the Department. The above guidance provides carriers with certain areas of flexibility. Carriers are directed to advise the Department of the actions the carrier is taking. Said information is to be submitted to the Department through the System for Electronic Rates and Forms Filing ("SERFF") as an informational filing.

MCaride

April 10, 2020
Date

Marlene Caride
Commissioner