

Bulletin 252

GUARANTEED ISSUE REQUIREMENTS IN THE SMALL GROUP AND INDIVIDUAL HEALTH INSURANCE MARKET: SWITCHING FROM A HIGH DEDUCTIBLE TO A LOW DEDUCTIBLE POLICY

This Bulletin revises and supersedes Bulletin 247 regarding consumers in the small group and individual health insurance markets who have been improperly advised by insurers and/or their agents that if they select a high deductible policy, they cannot thereafter revert to a low deductible policy. The Bureau has also received complaints from consumers with individual health insurance policies who have been improperly advised that they are ineligible to change their coverage until they have satisfied a waiting period. The Bureau would remind insurers and agents of the guaranteed issue requirements of Maine's Community Rating Laws, Title 24-A M.R.S.A. §§ 2736-C and 2808-B. The Bureau has long interpreted § 2736-C to require an insurer to make available to all individuals any individual policy being marketed to Maine residents. Bulletin 220 issued October 4, 1993 reminded insurers that:

A carrier may not decline an applicant seeking to replace an existing individual health plan.

Similarly, as was originally stated in Bulletin 210, dated June 16, 1993, under § 2808-B:

Any small group health plan offered to any eligible employer must be offered to all eligible employers having from one to 24 eligible employees, as defined in the law. No restrictions based on group size are permitted.

There are only two exceptions to this general rule. The first was stated in Bulletin 211, dated July 6, 1993, as follows:

Policies issued to groups with more than twenty employees are required to include a minimum level of benefits for mental health and substance abuse. (This includes policies issued to associations and multiple employer trusts, even if they cover employers with twenty or fewer employees.)...Plans which do not meet the minimum standards for these may be offered in a policy covering a single employer having twenty or fewer employees. Such plans need not be offered, and must not be offered, to groups subject to the mandates.

The second exception was established by Public Law Chapter 477, which enacted § 2808-B(6)(I) as follows:

Notwithstanding any other provision of this section, a carrier may choose whether it will offer to groups having only one member coverage under the carrier's individual health policies offered to other individuals in this State in accordance with section 2736-C or coverage under a small group health plan in accordance with this section, or both, but the carrier need not offer to groups of one both small group and individual health coverage.

Moving From High Deductible to Low Deductible Coverage - Individual Policies

Pursuant to § 2849-B(4), insurers must waive medical underwriting or preexisting condition exclusions ONLY: "to the extent that benefits would have been payable under a prior contract or policy if the prior contract or policy were still in effect." An individual replacing high deductible plan coverage with coverage under a low deductible plan has continuity rights pursuant to 24-A M.R.S.A. § 2849-B. There are two prongs to the coverage analysis in high-deductible-to-low-deductible coverage transfers: 1) whether or not there are any applicable preexisting condition exclusions; and, 2) the applicable deductible for claims under the replacement, low deductible policy. As to the first prong, the replacement policy must credit an individual for any preexisting condition exclusion period they had satisfied under the replaced policy. For example, if an individual had been subject to a 12 month preexisting condition exclusion for asthma under the replaced, high deductible policy, and had had coverage under that policy for 24 months, the replacement low deductible policy could not impose any preexisting condition exclusion as regards the insured's asthma, as at the time of policy replacement,

the insured was fully covered for the preexisting condition.

Moving to the second prong, an individual replacing coverage under a high deductible plan with coverage under a low deductible plan may be subject to the high deductible for up to 12 months, only as to any condition preexisting the date replacement coverage went into effect. The higher deductible may be imposed for health conditions existing prior to the effective date of the replacement policy regardless of whether or not the insured has satisfied all applicable exclusionary periods. Thus in the above example, as of the effective date of the replacement low deductible policy, the insured's asthma-related claims would be covered. Asthma-related claims, however, could be subjected to the higher deductible for 12 months. The high deductible would not be applicable to claims not arising from a preexisting condition.

Moving From High Deductible to Low Deductible Coverage - Group Policies

The continuity law provision (§ 2849) dealing with group-to-group replacements does not include the, "to the extent that benefits would have been payable under a prior contract..." language. Rather, the imposition of preexisting condition exclusions is absolutely prohibited where a group changes carriers, and the group policy is, within 90 days of its discontinuance, replaced with another group policy . Accordingly, a small group, as defined by Community Rating, may replace high deductible small group coverage with low deductible coverage without subjecting persons covered under that policy to the high deductible for any preexisting conditions as of the effective date of the replacement policy.

DATED: August 10, 1995 _____
BRIAN K. ATCHINSON
Superintendent of Insurance