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DEPARTMENT OF INSURANCE

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DATE: **March 2, 2004**

T0: **Individual Health Insurance Carriers**

FROM: **Mary L. Hartung, Director**

SUBJECT: **Individual Health Insurance - Requirements Relating to Federally Eligible Individuals**

The purpose of this Bulletin is to provide notice to carriers offering individual health coverage to Idaho residents of requirements under federal and state law relating to “federally eligible individuals.”

“Federally eligible individual” means an individual:

- a) Who has had at least 18 months of creditable coverage as of the date the individual seeks coverage under the Pool; and
- b) Whose most recent prior creditable coverage was under a group health benefit plan; and
- c) Who is not eligible for coverage under a group health plan, part A or part B of title XVIII of the Social Security Act (Medicare), or Medicaid, and who does not have other health insurance coverage; and
- d) Whose most recent creditable coverage was not terminated based on nonpayment of premiums or fraud; and
- e) Who, if offered, elected continuation coverage under a COBRA continuation provision or under a similar state program and exhausted such continuation coverage.

Renewability of Individual Health Plans

The Idaho Individual Health Insurance Availability Act (Chapter 52, Title 41, Idaho Code) was enacted to promote availability of health insurance coverage for persons not covered by employment-based insurance, regardless of their health status or claims experience. This act contains provisions governing renewability of coverage, and limitations on the use of preexisting condition exclusions. These provisions extend to

all federally eligible individuals; except no preexisting condition exclusion may be applied to federally eligible individuals.

Identifying Federally Eligible Individuals and Providing Notice at Time of Application

The federal agency Centers for Medicare and Medicaid Services (CMS) has informed the Idaho Department of Insurance that federal law requires individual carriers to ensure that all federally eligible individuals are identified during the application process. To comply with this requirement, all application forms used by individual carriers must solicit information that will allow the carrier to identify federally eligible individuals by including questions about the applicant's prior coverage history. Individual carriers are responsible for providing proper training to their agents to assure that federally eligible individuals are identified at the time of application for health insurance coverage. In addition, carriers must assure that federally eligible individuals are advised of and understand the protections that are available to them under the federal Health Insurance Portability and Accountability Act (HIPAA). To meet this requirement, all federally eligible individuals must be clearly informed, *prior to completing the application form*, that they are eligible for coverage under Idaho's Individual High Risk Reinsurance Pool benefit plans. Federally eligible individuals must be offered the Individual High Risk Pool plans along with any other types of coverage that may be available to them.

Universal Application Form

The Idaho Individual High Risk Reinsurance Pool Board has developed a Universal Application that includes information for identifying federally eligible individuals, various forms of creditable coverage, and other benefit protections for federally eligible individuals. The Universal Application can be obtained by contacting the Individual High Risk Reinsurance Pool Administrator at (208) 344-7900 ext. 3177, or from the Department's web page at www.doi.state.id.us. If an individual carrier intends to use the Universal Application, the carrier must file notice of its intent with the Department's Policy Rates and Forms Section. For information regarding this filing, contact the Department of Insurance at (208) 334-4250.

Preexisting Condition Limitations

Idaho Code § 41-5208 (3) identifies standards governing preexisting condition limitations for individual health insurance policies. By this Bulletin, the Department is providing notice to all carriers that no preexisting condition exclusion or limitation period may be applied to federally eligible individuals. A "preexisting condition exclusion" is a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the first day of coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before that day.

Qualifying Previous Coverage

Idaho Code § 41-5501(17)(b) defines “qualifying previous coverage” to include any individual health insurance policy or health benefit arrangement that provides “benefits similar to or exceeding benefits provided under the basic health benefit plan.” The CMS review committee has determined that the specific reference to "benefits similar to or exceeding benefits provided under the basic health benefit plan" in Idaho Code §41-5501(17)(b) is an impermissible restriction under federal law. Rather, health coverage that fits into any category of creditable coverage that is identified in HIPAA, must be considered creditable, regardless of how comprehensive it may be. Therefore, we are directing carriers to use this definition of creditable coverage in determining whether an individual is a federally eligible individual who is guaranteed the right to purchase a choice of individual coverage, with no preexisting condition exclusion. .

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