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DIVISION OF INSURANCE

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Bulletin 14-003

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Health Benefit Plans that Are Not Compliant with the Affordable Care Act May Not Be Issued or Renewed After 2013 (Clarification of Bulletin 14-001)

On March 25, 2014, the Division of Insurance (“Division”) issued Bulletin 14-001 in response to transitional policies proposed by the Centers for Medicare & Medicaid Services (“CMS”), which allowed health insurance plans that were not compliant with the Affordable Care Act (“ACA”) to be renewed through October 2016. As explained in Bulletin 14-001, the Commissioner does not have the discretion to allow plans that are not compliant with the ACA (“non-ACA compliant plans”) to be renewed beyond the time period authorized under the ACA. According to the ACA, these non-ACA compliant plans must be phased out in 2014.¹ See, e.g., 45 C.F.R. § 147.150(a) (requiring essential health benefits be effective for plan or policy years beginning on or after January 1, 2014); 45 C.F.R. § 147.40 (identifying various provisions that apply to grandfathered plans); and Nev. Rev. Stat. §§ 687B.470–.500 (incorporating and adding requirements for health benefit plans issued in Nevada on or after October 1, 2013, which become effective on or after January 1, 2014).

The Division would like to clarify that CMS’ transitional policy of November 14, 2013, as well as the extended *and expanded* transitional policy of March 5, 2014, if implemented, would violate state and federal laws that require non-ACA compliant plans to be phased out by 2014. The ACA’s phase out of non-ACA compliant plans is not discretionary.

The ACA and Nevada law did not prohibit insurers from offering early renewals of non-ACA compliant health insurance plans up until December 31, 2013. By offering early renewals of non-ACA compliant plans, consumers were allowed to keep their non-ACA compliant plans for

¹ See generally 42 U.S.C. §§ 18021–18022 (discussing qualified health plans and essential health benefits); 45 C.F.R. part 146 (establishing requirements for the group health insurance market); 45 C.F.R. part 147 (establishing health insurance reform requirements for the group and individual health insurance markets); 45 C.F.R. part 148 (establishing requirements for the individual health insurance market); Assem. Bill 425, 77th Leg. Sess. (Nev. 2013).

up to one year. Non-ACA compliant plans renewed on or before December 31, 2013, can remain in effect until their expiration in 2014. Thereafter, all health benefit plans sold or renewed in Nevada must be ACA compliant; Non-ACA compliant plans may no longer be renewed in Nevada.

Bulletin 14-001 applies to all non-grandfathered health benefit plans regardless of their renewal dates. It was not the Division's intent that Bulletin 14-001 be construed to apply only to health benefit plans that are not compliant with the requirements of the ACA and scheduled to be renewed between January 1, 2014, and October 1, 2014. This confusion arises from the fact that the March 5, 2014, extension of CMS' transitional policy also expanded the scope of the original transitional policy to certain policies not previously covered. Again, as clearly stated in Bulletin 14-001, the Commissioner does not have the discretion to allow non-ACA compliant plans to be renewed in 2014 because to do so would violate the ACA and Nevada law.



SCOTT J. KIPPER

Commissioner of Insurance