



DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

P.O. Box 690, Jefferson City, Mo. 65102-0690

INSURANCE BULLETIN 17-05 **Guaranteed Renewability in the Individual Market** **Issued: May 24, 2017**

The following Bulletin is issued by the Missouri Department of Insurance, Financial Institutions and Professional Registration (“Department”) to inform and educate the reader on the specified issue. It does not have the force and effect of law, is not an evaluation of any specific facts or circumstances, and is not binding on the Department. See section 374.015, RSMo.

To: All health carriers writing health insurance or health benefit plan coverage in Missouri

From: Director Chlora Lindley-Myers

Re: Guaranteed Renewability in the Individual Market

The Missouri Department of Insurance, Financial Institutions and Professional Registration is issuing this bulletin to provide information to health carriers writing health insurance or health benefit plan coverage in Missouri regarding guaranteed renewability in the individual market.

Section 376.454, RSMo (Supp. 2013) is part of Missouri’s Health Insurance Portability and Accountability Act (“Mo-HIPAA”), which closely mirrors the provisions of the federal Health Insurance Portability and Accountability Act (“HIPAA”) (P.L. 104-191). Specifically, section 376.454 requires health insurance issuers in the individual market to “renew or continue in force such coverage at the option of the individual.” The statute then outlines three scenarios whereby a health insurance issuer in the individual market may cease renewing or continuing in force individual health insurance coverage.

These three scenarios relate to when a health insurance issuer can non-renew or discontinue health insurance coverage of a particular individual, when an issuer decides to discontinue offering a particular type of health insurance coverage, and when an issuer decides to discontinue

offering all health insurance coverage in the individual market in the state. This bulletin refers specifically to subsections 3 and 4 of Section [376.454](#) RSMo Supp. 2013.

Section 376.454, which was enacted in 2007 by the Missouri General Assembly, is virtually identical to the corresponding federal law, 42 U.S.C. §300gg-42, which was originally enacted by Congress as part of HIPAA in 1996. These provisions were enacted by both Congress and the Missouri General Assembly long before the Affordable Care Act, and grandfathered and transitional plans were ever contemplated. The purpose behind these guaranteed renewability provisions in the pre-ACA environment was to ensure that once an individual obtained coverage in the individual market, where coverage was subject to pre-existing condition exclusion, he or she would be able to keep such coverage.

The authority of the Director is limited to enforcing insurance laws of this state.¹ Specifically, the regulation of individual health policies is limited by state law to ensuring compliance with “the insurance laws of this state,” and similar language also limits the Director’s authority with respect to the regulation of group insurance policies.² The Department has long held that the authority of the Director does not extend to enforcement of federal law within the state. Missouri’s lack of authority to enforce compliance with federal law is also acknowledged by the U.S. Department of Health and Human Services. Missouri is one of four states designated “direct enforcement states,” noting that in these states, enforcement of federal law is done by the federal government.³

Grandfathered health plans were created by Congress as part of the Affordable Care Act. 42 U.S.C. §18011, provides that nothing in the Affordable Care Act may be construed to require an individual to terminate coverage in a health plan in which the individual was enrolled on March 23, 2010. It also permits enrollment of family members or employees into plans that provided coverage on March 23, 2010 and which are renewed after that date, and calls these plans “grandfathered health plans.” In 2016, the Missouri General Assembly amended provisions of the small employer law to make some provisions of that law applicable only to plans issued on or before March 23, 2010.⁴ The General Assembly did not make similar amendments to provisions of law related to individual health plans, and grandfathered health plans are not defined under Missouri law for purposes of the individual market.

Transitional health plans (also known as grandmothers plans) were created by the Centers for Medicare and Medicaid Services (“CMS”) in 2013. In a letter⁵ to state Insurance Commissioners dated November 14, 2013, Gary Cohen, Director of the Center for Consumer Information and Insurance Oversight (“CCIIO”) outlined a transitional policy whereby health insurance coverage in the individual or small group market that is renewed for a policy year that

¹ Section 374.040 (Related to the duties of the director); section 374.046 (related to the director’s authority regarding violations of the laws “of this state”); and section 374.085 (related to the division of Consumer Affairs’ authority to investigate complaints related to unfair or unlawful acts under the insurance laws of this state).

² Section 376.777.7(3), RSMo (Supp. 2013). Similarly, disapproval of policy forms must also be predicated on the requirements of the laws of this state. See also section 376.405, RSMo (Supp. 2013).

³ See “Compliance and Enforcement,” <https://www.cms.gov/cciio/programs-and-initiatives/health-insurance-market-reforms/compliance.html>

⁴ See Sections 379.934, 379.936, and 379.940, RSMo (Non. Cum. Supp. 2016)

⁵ <https://www.cms.gov/cciio/resources/letters/downloads/commissioner-letter-11-14-2013.pdf>

begins between January 1, 2014 and October 1, 2014 will not be considered to be out of compliance with certain specified ACA market reforms. This transitional policy has been renewed annually since the initial November, 2013 announcement, with the most recent renewal of the policy occurring in February, 2017.⁶ Transitional health plans are not defined or addressed in any way under Missouri law.

Missouri law related to individual health insurance does not recognize different sub-classes of individual health insurance, such as grandfathered or transitional plans. Nothing in state law prohibits the extension of an offer of coverage under plans that are considered grandfathered or transitional under federal law.

In light of the tremendous uncertainty that surrounds the health insurance market, the Department is aware carriers are considering renewing individual health benefit plans considered to be grandfathered and transitional under federal law, while discontinuing all other types of individual health benefit plans. The Department has received inquiries from insurers regarding how such actions may be viewed by the Department in terms of Section 376.454 RSMo.

In issuing this Bulletin, the Department notifies insurers that it would view such actions as product discontinuations and that it will not take enforcement action against an insurer where:

- 1) The insurer renews any grandfathered and transitional plans continuously;
- 2) The insurer offers eligible individuals the opportunity to obtain coverage under grandfathered and transitional plans as required by applicable law;
- 3) The insurer complies with the 90-day notice requirement for all individuals whose coverage is discontinued, pursuant to 376.454.3(1);
- 4) The insurer, in taking any of the actions outlined in paragraphs 1-3, acts uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for such coverage; and
- 5) The insurer notifies the Department in writing of its intent to discontinue coverage as outlined herein at least 90 days prior to the discontinuation of coverage.

Missourians who have made the choice to keep grandfathered and transitional health plans should be able to keep that coverage in light of significant and tremendous market uncertainty. The provisions of this Bulletin will also ensure no arbitrary limitations impede competition and unnecessarily restrain consumer choice in the individual health insurance market.

Any insurers with questions or concerns should contact Angela Nelson, Director of Market Regulation at 573-751-2430.

⁶ See "Insurance Standards Bulletin Series -- INFORMATION -- Extension of Transitional Policy through Calendar Year 2018," February 23, 2017 <https://www.cms.gov/ccio/resources/regulations-and-guidance/downloads/extension-transitional-policy-cy2018.pdf>