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Docket No.: 20-00042-RULE-LH
IN THE MATTER OF ADOPTING NEW RULE 13.10.3 MINIMUM STANDARDS FOR SHORT-TERM PLANS

To whom it may concern:

I, Ronald Foster Seaton, A.S.A., M.A.A.A.,, am a Member of the American Academy of Actuaries, and meet the Qualification Standards of the American Academy of Actuaries to render both general and specific statements of actuarial opinion in matters pertaining to health insurance. Nevertheless, in presenting the following comments relating to the proposed adoption of 13.10.3 NMAC, I am not providing actuarial service for any principal, client, or employer; therefore these comments do not comprise official statements of actuarial opinion.

For the following reasons, I recommend that the Superintendent postpone adoption of this rule until certain amendments to statute can be effected, although comments here presume that adoption of this rule will proceed:

1) Section 59A-23G-6 NMSA 1978 prohibits absolutely any issuance of a short-term plan except "through a bona fide association." This means there shall be no direct sales by insurer representatives, no broker/agency (aka "producer") sales, etc. Clearly, this extreme restriction requires legislative remediation.
2) The concept of a "short-term plan" suffers unfortunately from an anomaly of logic in statute. Subsection 59A-23E-2.V NMSA 1978 states that, as used in Article 23E,

   > " 'individual health insurance coverage' means health insurance coverage offered to an individual in the individual market, but 'individual health insurance coverage' does not include short-term limited duration insurance".

   Unfortunately, Subsection 59A-23E-14.A NMSA 1978, which requires guaranteed renewal, does not use the exact term "individual health insurance coverage", but rather, "health insurance coverage in the individual or group markets", which is *not* defined to exclude "short-term limited duration coverage", and therefore requires even a short-term plan to "renew or continue that coverage at the option of … the individual", *which negates the principle of the short-term plan.*
   No doubt this anomaly arises from the 2019 extension of guaranteed renewal to individual coverage, which was already provided, *with* the exclusion of short-term plans, in Section 59A-23E-19 NMSA 1978, where the term "individual health insurance coverage" does in fact appear.
   For the sake of proceeding with the adoption of rule 13.10.3 NMAC, we might accept that it was not the 2019 legislature's intent to outlaw short-term plans, but the contradiction posed by the current wording of Subsection 59A-23E-14.A NMSA 1978 requires legislative attention nevertheless.

It should also be noted that the 2019 revision of Section 59A-23E-13 NMSA 1978 similarly extends guaranteed issue to short-term plans by use of the term "health insurance coverage in the individual or small group markets" rather than "individual health insurance coverage". If we use the consistent assumption, i.e., that Section 59A-23-13 NMSA 1978 was not intended to apply to short-term plans, then the guaranteed issue in the proposed 13.10.3.7.C NMAC should be removed as baseless, and therefore unfairly demanding on insurers. Such guaranteed issue might be retained by (a) admittedly using an *inconsistent* assumption regarding legislative intent (i.e., that Section 59A-23E-14 NMSA 1978 should have used "individual health insurance coverage or health insurance coverage in the group market", but Section 59A-23E-13 NMSA 1978 rightly used "health insurance coverage in the individual or small group markets"); or (b) awaiting legislative change to Section 59A-23E-14 NMSA 1978 without further alteration of Section 59A-23E-13 NMSA 1978.

It would seem advisable to clarify the proposed 13.10.3.7.A NMAC by adding: "Continuation and conversion rights of short-term plan dependents extend only to the original termination date of the policy."

"Short-term plan" is defined only for individual policies (per Paragraph 59A-23G-2.I.(2) NMSA 1978, "issued only to individuals"); therefore proposed 13.10.3.7.B NMAC should be revised by striking the references to group coverage. This subsection is also contrary to statute in reference both to "any plan" and to "12 months"; Paragraph 59A-23G-2.I(2) NMSA 1978 specifies that eligibility shall be determined by a *3* month hiatus from *nonrenewable* coverage, and imposition of a 12 month hiatus from "any plan" is therefore unfairly restrictive to the people of New Mexico. This error is repeated with regard to the time period, and must also be revised, in the disclosure language of the proposed 13.10.3.9.C(3) NMAC.

The use of the term "similar" in the proposed 13.10.3.7.B NMAC, as also in Paragraph 59A-23G-2.I.(2) NMSA 1978, has proven to be an invitation to debate by filing insurers, and should be more strictly clarified in the rule, perhaps by substituting "nonrenewable major medical coverage" for "the same or similar coverage". One of the issues to be considered should be: is the intended similarity a matter of risk value (e.g., specified benefits and cost-sharing), or merely a matter of insurance principles (i.e., the type of coverage)?

It would also seem advisable to clarify the proposed 13.10.3.10.A NMAC by substituting the word "requirements" for "filings", so as to fulfill the rulemaking requirements of Sections 59A-23G-3 and 59A-23G-4 NMSA 1978 by addressing the *substance* of short-term plans as well as the mere *process* implied by the word "filings".

Thank you for the opportunity to submit these comments. If you need any further information or desire any further discussion, please do not hesitate to contact me at rfseaton@aol.com.

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