

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE

SUPERINTENDENT OF INSURANCE
Russell Toal



DEPUTY SUPERINTENDENT
Robert E. Doucette, Jr.

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OF INSURANCE

BULLETIN 2020-019

October 1, 2020

TO: EVERY INSURER WHO SELLS, OR OFFERS TO SELL, AN EXCEPTED BENEFITS INSURANCE PRODUCT TO A NEW MEXICO RESIDENT

RE: OUT-OF-STATE GROUP EXCEPTED BENEFITS RATE AND FORM FILING

In Bulletin 2020-003, the superintendent of insurance imposed a moratorium on excepted benefits filings until rules are promulgated pursuant to Section 59A-23G-3 NMSA 1978. Effective October 1, 2020, the following excepted benefits products are subject to the rules promulgated in 13.10.34 NMAC:

- (1) coverage-only for accident insurance;
- (2) coverage-only for a specified disease or illness;
- (3) hospital indemnity or other fixed indemnity insurance; and
- (4) Champus/TRICARE supplement plans that provide one or more of the coverages specified in (1) through (3).

Because rules now apply to these excepted benefits products, the superintendent lifted the filing moratorium with respect to these plans. *See* Bulletin 2020-017.

Pursuant to 13.10.34.2(B) NMAC, the new excepted benefits rules apply to plans “issued in this state, and to any such contract issued to a group located outside of this state, if any covered person resides in this state.” This rule clarifies that a carrier cannot sell a New Mexico resident excepted benefits under a plan issued to an out-of-state group, unless the plan complies with New Mexico law and has been approved by the superintendent. Because that directive is contrary to the guidance in Bulletin 2019-006, the superintendent rescinded that bulletin. *See* Bulletin 2020-018.

Because of the foregoing, an insurer who intends to offer an excepted benefit product to New Mexico residents under a master policy issued to an out-of-state group may now seek the superintendent’s approval of the plan as required by Section 59A-18-12 NMSA 1978. During the stakeholder meetings that preceded the promulgation of 13.10.34 NMAC, a question arose concerning whether the superintendent would deny approval of a group excepted benefits plan if the master policy issued to an out-of-state group did not comply with New Mexico rules.

When a certificate of insurance issued under a group master policy includes provisions that are more favorable to the certificate holder insured, the terms of the certificate control over the terms of the master policy. *See, generally*, 1A Couch on Ins. § 8:21. Relying on this rule, it is a common practice for an insurer who issues a group master policy that insures individuals in multiple states to file state specific certificates of insurance that bring the coverage into compliance with the insurance laws of the state where a group member resides.

Following this practice, an excepted benefits insurer who issues a master policy to an out-of-state group can satisfy New Mexico compliance requirements by obtaining approval of a New Mexico compliant certificate of coverage that supersedes conflicting provisions of the master policy. Pursuant to Section 59A-18-2 NMSA 1978, the master policy and the certificate constitute the contract of insurance, which must be collectively approved before any certificate under the master policy can be issued to a New Mexico resident. For purposes of complying with New Mexico rate and minimum loss ratio requirements, an insurer can segregate New Mexico experience if the aggregate experience from all states does not comply with New Mexico law. Insurers are cautioned, however, that no certificate of group insurance can be issued to a New Mexico resident unless the master policy was issued to a group identified in Section 59A-23-3 NMSA 1978.

If you have questions regarding this Bulletin, please contact Todd Baran at todd.baran@state.nm.us

ISSUED this 1st day of October, 2020.



RUSSELL TOAL
Superintendent of Insurance