STATE OF CALIFORNIA

DEPARTMENT OF INSURANCE
SAN FRANCISCO

Bulletin No. 93-4
June 25, 1993

TO: ALL INSURERS PROVIDING EMPLOYMENT-RELATED "HEALTH" COVERAGE

SUBJECT: Assembly Bill No. 1672:

I. How it Affects *All* Employment-Related Health Insurance.

II. Determining Whether a New Plan Entrant Gets Credit for "Time Served" in a Prior Qualifying Plan.

II. Changes to the Emergency Regulations (File No. RH-317) pertaining to the "Small Employer" Provisions of AB1672.

SUMMARY

This Bulletin alerts you to those provisions of Assembly Bill No. 1672 (Chapter 1128 of the Statutes of 1992) which apply to virtually all employment-related "health" insurance products issued or in force in this state, regardless of the situs of the policy, effective July 1, 1993. This Bulletin also provides guidance in interpreting the phrase "any waiting period" in Insurance Code §§10198.7(c) and 10708(c). This Bulletin also notifies you of a change in §2233.20, Renewal Date, in the emergency regulations pertaining to the "small employer" provisions of AB1672.

I. HOW AB1672 AFFECTS ALL EMPLOYMENT-RELATED HEALTH INSURANCE.

A. HIGHLIGHTS OF THE NEW LEGISLATION.

AB 1672 adds §§10198.6 through 10198.9 to the California Insurance Code, applicable to employment-related individual or group health insurance programs covering three or more persons. These provisions apply regardless of whether the employer contributes to the premium.

Insurance Code §§10198.6 through 10198.9:

- Apply to most types of health insurance ". . . offered through employment or sponsored by an employer . . ." providing benefits to California residents ". . . regardless of the situs of the contract or group master policyholder" (Ins. C. §§10198.6(a) and 10198.8);

- Narrowly define what can be excluded as a "pre-existing condition" (Ins. C. §§10198.6(c) and 10198.7(a));

- Establish maximum time limits for pre-existing conditions exclusions imposed on newly eligible persons and on waiting periods imposed on "late enrollees" (Ins. C. §10198.7);

- Require that insurers credit, toward the satisfaction of pre-existing conditions exclusions or waiting periods, newly-insured persons with the time that they were covered under qualifying preceding health benefit plans in specified circumstances (Ins. C. §10198.7(c));

- Prohibit waivers, exclusions or special waiting periods for coverage applicable to specific persons (Ins. C. §10198.7(a).

Parallel Health and Safety Code provisions in AB1672 apply to Health Care Service Plans. (Please refer to Bulletin 93-3, of April 15, 1993, and Title 10, California Code of Regulations §§2233 through 2233.99 for guidance about AB1672 as it applies to products covering employers of from 3 to 50 employees.)

B. Questions and Answers About The Provisions of AB1672 Which Apply to Employment-Related Health Insurance.

The comments below reflect our understanding of the intended operation of AB1672 and are provided to assist you in your analysis of the law. These comments assume that the health benefit plans at issue ARE NOT subject to the "small employer" provisions of AB1672, except as noted. "Trailer" legislation is always possible, so you should ensure that you are referring to a current version of the law.

1. *What size employer plans are subject to* AB 1672?

The jurisdictional language of the "employment-related" provisions of AB1672 does not speak in terms of employer size. Any health benefit plan that covers three or more persons (not just employees) and that is offered or provided through employment or is sponsored by an employer may be subject to the "employment-related" provisions of AB1672.

Note that plans covering employees of employers of between 3 and 50 employees may be subject to the employment-related provisions of AB1672 even if they are exempt from the "small employer" provisions of the law - for example, small employer plans which are paid for entirely by the employees. Ins. C. §§10198.7(a) and (d).

2. *Does AB 1672 apply to individual (including selected group or "franchise") health insurance policies offered through employment or sponsored by an employer?*

Yes, except for noncancellable or guaranteed-renewable policies (as defined in Ins. C. §§10273 and 10273.3, respectively) which were delivered prior to July 1, 1993. Ins. C. §10198.6(a).

3. *Are "supplemental coverages" such as "cancer" or "long-term care" subject to AB 1672?*

Yes and no. Insurance Code §10198.6(a) specifically exempts certain types of products, such as Medicare supplement, long-term care and dental and vision products. All other products which provide medical, hospital, and surgical benefits, regardless of whether they are provided on an "indemnity" or expense-incurred basis, are subject to the law. Thus, dread disease and hospital indemnity products must comply with the law. Note that, in contrast to the "small employer" provisions of AB1672, there is no exemption of products whose cost is not contributed to by employers.

4. *Must programs established before July 1, 1993 (AB1672's effective date), provide a 30 day "open enrollment period" for previously-excluded employees and dependents, as required of such programs when they cover "small employers"?*

No, unless the carrier wants to impose or has imposed a special limitation on coverage for "late enrollees", as defined in Ins. C. §10198.6(b) and as discussed immediately below.

5. On its face, Ins. C. §10198.7(d) forbids exclusion of late enrollees for more than 12 months. Must a health benefit plan accept all late enrollees after 12 months regardless of medical status?

We believe that the Section means that there may not be any special limitation, lasting more than 12 months, based on a person's being a late enrollee as defined in Ins. C. §10198.6(b). Therefore, at the end of 12 months, the late enrollee should have the same rights as a new enrollee - if new entrants are not medically underwritten, then neither should "late enrollees" be, at the end of the 12 month waiting period. Similarly, a person who is not a late enrollee under 10198.6(b), because, for example, he or she had lost other group coverage, would have to be treated as a new enrollee upon application for coverage. In cases where new employees or dependents may be excluded for underwriting reasons, late enrollees may also be so excluded.

6. Insurance Code §§10198.6(c) and 10198.7(a) seem to limit definitions of "pre-existing conditions" to those for which "medical advice, diagnosis, care, or treatment . . . was recommended or received . . ." within six months before the effective date of coverage. May an insurer also include conditions for which a "reasonable" or "prudent" person would have sought advice or treatment within that six months? May the definition include conditions which became "manifest" within that period?

No. Only those conditions described in the cited Code Sections may be "pre-existing conditions". An insurer may make the definition of "pre-existing conditions" more precise, such

as by defining "medical advice", etc., more specifically, but it may not expand the definition beyond the boundaries established by the Code Sections.

7. *When must a plan be brought into compliance with the new law?*

The operative provisions (sub§§ (a) and (d) of Ins. C. 10198.7) of AB1672 apply to any product ". . . issued, renewed or written by any insurer . . . " on or after the effective date of the law - July 1, 1993. We understand that the intent of the word "written" was to make the law apply to all programs in force as of that date.

8. *Do the "waiting period" limitations of AB1672 apply to employer-imposed rules postponing new employees' eligibility for fringe benefits until they have been at work for some period of time ("probationary periods")?*

No. AB1672 does not generally regulate employers' activities. However, such probationary periods are included in the term "any waiting period" as used in Ins. C. §10198.7(c) - see Item II, below.

9. If a carrier wants to cover immediately a "late enrollee" who could be excluded entirely for one year, could it impose a waiver of coverage for a specified pre-existing condition for that year?

Yes. It would appear to be consistent with the law to allow carriers to impose individual "waiver" riders on late enrollees in lieu of totally excluding them from coverage, for the period of time that the late enrollee could be excluded entirely. We construe the "small employer" provisions of AB1672 similarly. (Ins. C. §§10198.6(b) and 10198.7(d)).

10. *Does AB 1672 apply to insured "Taft-Hartley" plans?*

Insurance products issued to such plans must comply with AB 1672's "employment-related" provisions pertaining to pre-existing conditions limitations and late enrollees regardless of the size of the employers involved. Note that Title 10, California Code of Regulations §2233.10(b), in the Emergency Regulations becoming effective July 1, 1993 (File No RH-317), exempts some insured "Taft-Hartley" plans from the "small employer" provisions of AB1672. (Ins. C. §10198.6(a)).

11. *Does AB 1672 apply to self-insured "large employer plans"?*

"Self-insured" plans operated by state and local government entities (if not otherwise exempted) and religious organizations must comply with Ins. C. §§10198.6 through 10198.8. Such plans are not subject to ERISA and are thus not exempt from state regulation under that law's "preemption provision". (Ins. C. §§10198.7(a) and 10198.7(d)).

Lawful private single-employer or labor-management ("Taft-Hartley") self-insured plans which are otherwise legitimately exempt from state regulation under ERISA need not comply with the requirements of Ins. C. §10198.7. (Note that "MEWAs" are illegal under California law.) However, sub§(e) of the Section prohibits carriers from providing "stop loss" coverages to such self-insured plans that have pre-existing conditions or late enrollee provisions that are inconsistent with AB1672.

II. Determining Whether a New Plan Entrant Gets Credit for "Time Served" in a Prior Qualifying Plan.

We understand that the intent underlying the "credit for time served" concept is that, once someone has entered the private health care sector, he or she need "pay their dues" only once, unless that person leaves the sector for so long that their re-entry suggests an anti-selection motive. A new employee or dependent should not have to suffer new pre-existing conditions exclusions because the employer or insurer imposes delays between the start of employment and eligibility for coverage which, when added to his or her time between employment periods or coverages, exceed the 30 or 90 day period applicable under the law.

Insurance Code §10198.7(c) - pertaining to employment-related health insurance - and §10708(c) - pertaining to "small employer" health insurance - provide that a carrier shall ignore "any waiting period" in determining whether to give a new plan entrant "credit for time served" under a Prior Qualifying Plan against any limitations in the carrier's plan applicable to new entrants. Similarly, the cited Sections require that time attributable to applying for coverage "within the applicable enrollment period" be ignored in determining whether to give a new plan entrant "credit for time served." We believe that the phrase "any waiting period", as used in the Sections, includes both employer-imposed "probationary periods" and carrier-imposed waiting periods for coverage. We also believe that the phrase "becomes eligible within 30 (or 90) days of termination of prior coverage" should be read as meaning "becomes employed or has a new health benefit plan take effect."

III. Changes to the Emergency Regulations (File No. RH-317) Pertaining to the "Small Employer" Provisions of AB1672.

A. The following substantive changes have been made in the emergency regulations as set forth in the "Notice of Proposed Adoption of Emergency Regulations . . .", File No RH-317, dated June 11, 1993:

1. The last sentence in Section 2233.20(b) has been changed as follows:

"Such guarantees must be set forth in the master policy ~~and in the certificates issued to covered employees~~ or in the individual policies issued to ~~such~~ covered employees."

2. Section 2233.52 has been stricken entirely and the phrase "or waiting period" has been stricken from the first sentence of §2233.70.

B. Addenda to the "Notice of Proposed Adoption of Emergency Regulations . . .", File No RH-317, dated June 11, 1993.

1. The following text was omitted from the top of Page 3 of because of a reproduction error (no text was omitted from the regulations): "These regulations are necessary to interpret the ambiguities and uncertainties in AB 1672 which"

2. On Page 12, "Ms" should be deleted from the fourth line of the last paragraph and the last word on the page should be "your".

IV. INQUIRIES *about this Bulletin or AB 1672 as it applies to Department of Insurance licensees should be directed to:*

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