



April 24, 2017

Ms. Coni Fries
Vice President of Government Relations
Blue Cross Blue Shield of Kansas City
2301 Main Street
Kansas City, Missouri 64108

Re: Expedited Request for No-Action Letter - April 6, 2017

Dear Ms. Fries:

Blue Cross Blue Shield of Kansas City ("BCBSKC") submitted a request for a no-action letter to Angela Nelson on April 6, 2017. In this request for a no action letter, BCBSKC outlined a scenario whereby it is considering renewing only its grandfathered and grandmothers health plans for plan year 2018, and not offering or renewing any other policies in the individual market. BCBSKC requests the Department make a determination that this course of action would not constitute a market withdrawal, as contemplated under section 376.454.4(1). Specifically, BCBSKC also requests that the DIFP issue a no-action letter stating it will not take enforcement action against BCBSKC for not complying with the corresponding regulatory notice requirements and a prospective determination that the company would not be prohibited from issuing new policies in the individual market for a period of five years.

Section 374.018

The Missouri Department of Insurance, Financial Institutions and Professional Registration ("DIFP") has authority under section 374.018, RSMo, to issue no-action letters related to the business of insurance in the state. A no-action letter is defined as "a letter that states the intention of the department not to take enforcement actions under section 374.046 with respect to the requesting insurer, based on the specific facts then presented and applicable law, as of the date a no-action letter is issued." 374.018.1, RSMo Non Cum. Supp. 2015. A no-action letter is not considered a statement of general applicability that would require promulgation by rule. The insurer seeking a no-action letter from DIFP has an affirmative obligation to make a full, true, and accurate disclosure of all information related to the request for the no-action letter.

Regulatory Background

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. Section 376.454.2, .3, and .4, RSMo Supp. 2013. The question presented by BCBSKC involves the provisions of subsection 4 of Section 376.454:

4. (1) In any case in which a health insurance issuer elects to discontinue offering all health insurance coverage in the individual market in the state, health insurance coverage may be discontinued by the issuer only if:

(a) The issuer provides notice to the director and to each individual of such discontinuation at least one hundred eighty days prior to the date of the expiration of such coverage; and

(b) All health insurance issued or delivered for issuance in the state in such market is discontinued and coverage under such health insurance coverage in such market is not renewed.

(2) In the case of a discontinuation under subdivision (1) of this subsection, the issuer shall not provide for the issuance of any health insurance coverage in the individual market for a five-year period beginning on the date of the discontinuation of the last health insurance coverage not so renewed.

Discussion and Conclusion

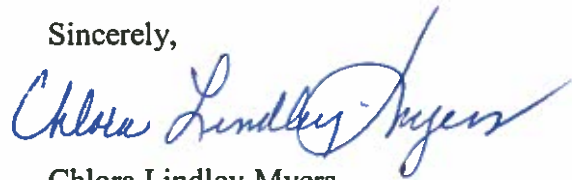
BCBSKC states in its letter that it is considering taking action with regard to the individual market for 2018 that would involve “renewing only its grandfathered and/or grandmothers policies.” In this scenario, BCBSKC would continue to renew some coverage in the individual health insurance market. It would not, therefore, be electing to “discontinue offering *all* health insurance coverage in the individual market in the state” Section 376.454.4, RSMo (emphasis added). Subsection 4 requires the carrier discontinuing all health insurance coverage in the individual market to provide 180 days’ notice to the Director and each individual of such a discontinuation, and it specifies again that *all* health insurance coverage in the individual market is discontinued and not renewed. In the case of BCBSKC as presented in the request for a no-action letter, BCBSKC clearly intends to continue to renew some of its individual health insurance products in 2018. Therefore, based on the facts presented to DIFP by BCBSKC this action does not constitute a complete discontinuation of all health insurance in the individual market, does not trigger the 180 day notice requirement, and does not trigger the five-year ban on future issuance of health insurance coverage in the individual market.

Based upon the facts presented by BCBSKC, it appears the action being considered may constitute a discontinuation of a *particular type* of health insurance coverage, pursuant to subsection 3 of section 376.454. DIFP was not asked to opine or provide relief with regard to the provisions of subsection 3 of section 376.454. Accordingly, BCBSKC should review the provisions of subsection 3 of section 376.454, particularly subdivision 2 of subsection 3, to ensure its compliance.

This no-action letter and enforcement relief granted herein reflect the interpretation and position of the DIFP based solely upon the facts as presented by BCBSKC in its letter of April 6, 2017.

The relief issued by this letter does not excuse any other persons or insurers from compliance with this or any other applicable requirements. This letter does not create or confer any rights or obligations on the Department or other insurers subject to the provisions of section 376.454. As with all no action letters, the relief offered in this no-action letter shall remain in effect as long as there is no change in material fact or law or the discovery of a material misrepresentation or omission made by BCBSKC concerning the specific conduct that is the subject of this letter.

Sincerely,



Chlora Lindley-Myers

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