

**STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**

Before the Director of the Department of Insurance and Financial Services

**In the matter of Affordable Care Act
Extended Transitional Policy**

Order No. 14-015-M

**Issued and entered
this 10 day of April 2014
by Annette E. Flood
Director**

**ORDER REGARDING AFFORDABLE CARE ACT
EXTENDED TRANSITIONAL POLICY**

On November 14, 2013, the Centers for Medicare & Medicaid Services (CMS) issued guidance describing a transitional policy announced by President Obama (“transitional policy”). Under the transitional policy, the federal government stated that it would not enforce certain Affordable Care Act (“ACA”) market reforms that would otherwise become effective on January 1, 2014. At that time, the Director of the Department of Insurance and Financial Services (“DIFS”) adopted the transitional policy and allowed health insurance issuers to reinstate certain discontinued plans in accordance with guidance provided by CMS. This decision resulted in several issuers reinstating certain plans (referred to in this order as “transitional plans”).

On March 5, 2014, CMS issued additional guidance that allows, but does not require, states to implement an extension of the transitional policy (“extended transitional period”). Under the new guidance, three categories of plans are permitted to be renewed through plan years beginning on or before October 1, 2016: 1) transitional plans (i.e., those plans that were renewed under the transitional policy); 2) plans that were not renewed under the transitional policy but that were in effect as of December 31, 2013; and 3) plans offered to employer groups that currently purchase coverage in the large group market but will be categorized as “small

groups” as of January 1, 2016, pursuant to Section 1304(b) of the ACA. As described below, the Director has adopted this extended transitional period for all three categories of plans to the fullest extent permitted by CMS.

During this extended transitional period, issuers that have issued or will issue a policy under the original transitional policy anytime in 2014 may (but are not required to) renew such policies at any time through October 1, 2016. In addition, issuers may (but are not required to) renew any plan in effect as of December 31, 2013. Affected individuals and small businesses may, at their option, re-enroll in such coverage through October 1, 2016. Finally, large businesses that currently purchase insurance in the large group market but that, as of January 1, 2016, will be redefined by section 1304(b) of the ACA as small businesses (i.e., businesses with between 51 and 100 employees), may (at the option of the issuer) renew their current policies through policy years beginning on or before October 1, 2016, without their policies being considered to be out of compliance with certain provisions, specified below, that apply to the small group market but not to the large group market.

Issuers that participate in this extended transitional period should be aware that all plans must still comply with the following four sections of the ACA and applicable federal regulations:

- Section 2711 (relating to the prohibition on annual dollar limits on essential health benefits);
- Section 2726 (relating to mental health parity requirements applicable to individual plans upon renewal on or after July 1, 2014);
- Section 2708 (relating to the prohibition on excessive waiting periods, applicable to small group plans only); and
- Section 2704 (relating to the prohibition on pre-existing conditions).

THEREFORE, IT IS ORDERED that issuers may continue to renew 1) individual, 2) small group, or 3) large group plans for employers having between 51 and 100 employees that meet all of the following criteria:

- The policy was in effect on December 31, 2013¹;
- The policy was discontinued or planned to be discontinued in accordance with federal and state law; and
- The policy is renewed for a policy year that begins on or before October 1, 2016.

FURTHER, IT IS ORDERED that plans that are renewed in accordance with federal guidance and this Order will be exempt from the following ACA market reforms (although issuers are not prohibited from complying with these sections, at the issuer's option):

- Section 2701 (relating to fair health insurance premiums);
- Section 2702 (relating to guaranteed availability of coverage);
- Section 2703 (relating to guaranteed renewability of coverage);
- Section 2704 (relating to the prohibition of pre-existing condition exclusions or other discrimination based on health status), with respect to adults, except with respect to group coverage;
- Section 2705 (relating to the prohibition of discrimination against individual participants and beneficiaries based on health status), except with respect to group coverage;
- Section 2706 (relating to non-discrimination in health care);
- Section 2707 (relating to comprehensive health insurance coverage);
- Section 2709, as codified at 42 U.S.C. § 300gg-8 (relating to coverage for individuals participating in approved clinical trials);
- Section 1312(c) (relating to the single risk pool requirement).

FURTHER, IT IS ORDERED that plans participating in the extended transitional period that are renewed in accordance with federal guidance and this Order will be exempt from the following sections of state law:

- MCL 500.2213b(4)-(6) and MCL 550.1401e(4)-(6) (relating to guaranteed renewability)²;
- MCL 500.3428 and MCL 550.1501c (relating to network adequacy standards)³;
- MCL 500.3472 and MCL 550.1620(2)-(4) (relating to the prohibition of pre-existing condition exclusions and the establishment of open enrollment periods), except with respect to group coverage;
- MCL 500.3474a and MCL 550.1410b (relating to permissible rating factors);
- MCL 500.3612a (relating to permissible rating factors for conversion policies);
- MCL 500.3705(b) (relating to permissible rating factors for small group policies);

¹ Any modification of policy terms at renewal after October 1, 2013, including term length, will be deemed to create a "new policy," thereby disqualifying the policy from this exemption.

² Renewed plans remain subject to MCL 500.2213b(1)-(3) and MCL 550.1401e(1)-(3).

³ Renewed plans remain subject to, if applicable, MCL 500.3530 and MCL 550.1504(1)(a).

- MCL 500.3712(2) (relating to guaranteed renewability for small group policies).

FURTHER, IT IS ORDERED that issuers renewing plans through October 1, 2016, must, for each policy year, provide the relevant notice(s) (“CMS Notices”) to affected individuals and small businesses as specified in the March 5, 2014 CMS guidance. In addition, issuers must provide a separate notice of any rate increases to affected policyholders in accordance with state law. Both notices must be filed with DIFS.⁴

FURTHER, IT IS ORDERED that issuers adhere to the following filing requirements:

- Rates and forms must be filed via SERFF at least 60 days prior to becoming effective;
- Rate and form filings must be in compliance with all applicable sections of the Insurance Code of 1956, MCL 500.100 *et seq.*, and PA 350 of 1980, MCL 550.1101 *et seq.*, except as set forth in this Order;
- Form filings must include, under Forms, a copy of the CMS Notice(s) and any separate notice(s) of rate increase sent to policyholders;
- Filings must be complete and appropriately designated as filing type “Transitional Rate and/or Form”;
- Filings must reference the SERFF tracking number of previously approved form filings; and
- Filings must include an attestation, signed by an officer of the issuer, confirming compliance with this Order.

LASTLY, IT IS ORDERED that issuers choosing to renew plans in accordance with federal guidance and this Order must submit rate filings to DIFS for review and approval before any rate increase can be imposed.

Any violations of this order will result in appropriate administrative action.


Annette E. Flood
Director

⁴ The notices of reinstatement and rate increases are subject to review, but not prior approval, by DIFS.