



## State of New Jersey

DEPARTMENT OF BANKING AND INSURANCE

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### BULLETIN NO. 11-20

**TO: ALL AUTHORIZED AND ADMITTED INSURERS WRITING STOP LOSS INSURANCE TO SMALL EMPLOYERS AND ALL LICENSED INSURANCE PRODUCERS**

**FROM: THOMAS B. CONSIDINE, COMMISSIONER**

**RE: SELECTIVE MARKETING OF STOP LOSS COVERAGE**

It has come to the attention of the Department that some writers of stop loss policies have been selectively marketing coverage to small employers on the basis of the health history of that employer's employees, and denying coverage to employers based on employee health status. The result of this selective underwriting is to "cherry pick" groups less likely to incur claims, leaving the groups more likely to incur claims to the state's guaranteed issue insured market. This in turn drives premiums up for small employers purchasing insured plans.

N.J.S.A. 17B:27A-18, applicable to insured plans, requires that "Carriers shall offer coverage to all eligible employees of small employers and their dependents and shall not exclude any employee or eligible dependent on the basis of a health status-related factor." Insurers of insured plans are therefore precluded from considering health status in offering plans to small employers.

Stop loss insurance is excluded from the statutory definition of health benefit plan (see N.J.S.A. 17B:30-58) and is therefore not subject to all of the laws and regulations applicable to health benefits plan. Stop loss insurance, however, is subject to the trade practices requirements at N.J.S.A. 17B:30-1 et seq. That law sets forth specific unfair trade practices, and further provides that "The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance or annuities is not exclusive or restrictive or intended to limit the powers of the commissioner or any court of review under the provisions of this code."

It is the Department's position that the selective marketing and underwriting described herein constitutes an unfair trade practice.

Since the effects of the practice described above are to create unfair competition between small employer carriers and stop loss carriers and to increase the cost of insured small employer health insurance programs, the Department intends to promulgate regulations in the near future to prohibit the consideration of health status in the offering or pricing of stop loss insurance

offered to small employers as defined at N.J.S.A. 17B:27A-17. In the interim, carriers are urged to refrain from engaging in this unfair trade practice. Carriers that selectively market stop loss policies in the manner described herein will be subject to sanctions pursuant to N.J.S.A. 17B:30-1, et seq.

October 3, 2011  
Date



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Thomas B. Considine  
Commissioner

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