



**STATE OF ARIZONA**  
**DEPARTMENT OF INSURANCE**

**JANE DEE HULL**  
Governor

2910 NORTH 44th STREET, SUITE 210  
PHOENIX, ARIZONA 85018-7256

**CHARLES R. COHEN**  
Director of Insurance

**CIRCULAR LETTER 2000-1**

**TO:** All Health Care Insurers, Health Care Service Organizations, Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations, Optometric Service Corporations, Insurance Trade Associations and Interested Parties

**FROM:** Charles R. Cohen  
Director of Insurance

**DATE:** January 6, 2000

**RE:** **Issuers' Affirmative Obligations Under the Health Insurance Portability and Accountability Act (HIPAA)**

The purpose of this circular is to remind companies selling health care insurance in the individual market ("issuers") of their affirmative obligation to identify and timely respond to Eligible Individuals under the Health Insurance Portability and Accountability Act (HIPAA).

HIPAA requires issuers to provide guarantee issue of an individual health insurance policy to Eligible Individuals<sup>1</sup>. Under HIPAA, an issuer cannot deny coverage to an Eligible Individual. In Section III of the attached Program Memorandum, the Health Care Financing Administration (HCFA) has unambiguously placed the responsibility for identifying Eligible Individuals upon issuers. As noted in the attached memorandum, a prospective insured need not refer to HIPAA nor use any specific terminology such as "guaranteed issue" to trigger the issuer's obligation. Whenever a prospective customer who may potentially be an Eligible Individual contacts an issuer or its agent, the issuer and its agents have an affirmative obligation to advise the customer of HIPAA and the right to guaranteed issuance of a policy.

The Department is concerned that some issuers may be avoiding this affirmative obligation. To date, although there are approximately 35 companies doing business in the individual market, only three companies issued the majority of HIPAA policies issued in 1998. These three companies issued 2587 of the 2813 policies sold to Eligible Individuals. The Department expects 1999 figures to follow the same trend. These disparate numbers suggest that some issuers are not making HIPAA policies readily

---

<sup>1</sup> An Eligible Individual is a person having 18 months of creditable coverage, the most recent of which is group, without any breaks in coverage longer than 63 days, and who has no right to other insurance.

available to prospective insureds. Some issuers may be using a variety of techniques to discourage prospective Eligible Insureds, such as refusing to quote rates over the phone, making exaggerated statements about the high cost of HIPAA policies, requiring customers to specifically refer to HIPAA or guaranteed issue before volunteering any information, requiring the customer to write in for more information, and delaying the transmittal of requested information. As noted in the attached Program Memorandum, such techniques are not allowed and will subject the issuer to sanctions for failure to comply with HIPAA and corresponding state law.

To determine whether an issuer is complying with its affirmative obligation under HIPAA, the Department will closely examine the issuers' practices, particularly in comparison to how the issuer responds to prospective insureds who are not Eligible Individuals. The Department will look at the issuer's materials for training staff on HIPAA's requirements, and its policy and procedures for eliciting factual information to determine potential HIPAA eligibility and responding to customer inquiries. The Department will examine the issuer's methods for responding to customer requests for information about HIPAA policies and whether those practices differ from the methods used for other types of individual policies. For example, if the issuer will telephonically quote rate information for non-HIPAA policies, the Department will expect the issuer to do so for HIPAA policies. The Department will examine the ease with which an issuer makes information available to HIPAA eligibles in comparison to other individuals, and also the time periods for transmittal of information. The Department will look at whether there is unreasonable delay in providing information and guidance on HIPAA policies, following a request.

The Department encourages all issuers selling in the individual market to make any changes necessary to ensure that the issuer promptly identifies Eligible Individuals and does not delay or impede the individual's ability to exercise the right to guaranteed issuance of an individual health insurance policy. Companies found to be out of compliance with the obligations discussed in this circular will be subject to appropriate regulatory action, which may include applicable civil penalties.