



July 11, 2023

Via e-mail to: jhunsaker1@humana.com

Mr. James Hunsaker
Director, Regulatory Compliance
Humana Insurance Company
500 W. Main Street
Louisville, KY 40202

Re: No Action Letter Request of April 17, 2023

Dear Mr. Hunsaker:

I am in receipt of your letter dated April 17, 2023, requesting the Missouri Department of Commerce and Insurance (“Department”) issue a No Action Letter to Humana Insurance Company (“HIC”). The request asks the Department to allow HIC to continue offering and issuing small group medical plans in Missouri during the 180-day notice period of HIC’s exit from the small group market, notwithstanding the requirements of Section 379.938, RSMo.

Background

On March 2, 2023, HIC provided written notice to the Department that it will exit the small and large employer group markets in Missouri. HIC advised the Department that it would not accept quotes for small employer plans with effective dates on and after April 1, 2023, in order to comply with Section 379.938.2, RSMo. Section 379.938.2 requires carriers who choose not to renew all business in the small group market in the state to be prohibited from writing new business in the small group market in the state for a period of “five years from the *date of notice to the director*” (emphasis added).

Subsequently, HIC had a discussion with the Centers for Medicare and Medicaid Services (“CMS”) on March 22, 2023, regarding the company’s small group market exit in Missouri. CMS advised HIC that it should continue to accept requests and issue quotes for small employer plans until the end of the 180-day discontinuance notice period, pursuant to 45 C.F.R. 147.104(a), the guaranteed availability requirement under federal law. Given this guidance from CMS, HIC resumed accepting new small employer requests for quotes on April 12, 2023. HIC intends to continue issuing quotes upon request for small employer plans in Missouri through October 1, 2023. HIC will begin discontinuing plans with effective dates beginning November 1, 2023, or later.

Missouri Law

Three nearly identical provisions of Missouri law outline requirements related to a health carrier’s withdrawal from the market in the state. Section 376.454.4(1) requires carriers withdrawing from



the *individual market* to provide notice to the director and each individual impacted at least 180 days prior to the date of the expiration of the coverage, and provides that all of a carrier's coverage in the individual market is discontinued and not renewed. Section 376.454.4(2) outlines the five-year prohibition for carriers who withdraw from the individual market, stating "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*"(emphasis added). Section 376.454.4(2), RSMo Supp. 2021. Likewise, Section 376.452 addresses market withdrawals in the *large group market*. Using virtually identical language, Section 376.452.4(1) requires 180 days' notice to the director and each plan sponsor, participant, and beneficiary of the discontinuation of the plan. The five-year market ban for the large group market in Section 376.452.4(2) is identical to the provision of Section 376.454 cited above for the individual market.

Missouri's small employer group law is found in Chapter 379, beginning in Section 379.930. Specifically, Section 379.938 addresses market withdrawals, again requiring 180 days' prior notice be provided to the director and to each plan sponsor, its participants, and its beneficiaries, and requires the carrier to discontinue all such coverage in the small group market. Section 379.938.1(7), RSMo. However, the five-year ban on offering coverage after a market withdrawal is slightly different. For small group plans, Section 379.938.2 provides that "a small employer carrier that elects not to renew a health benefit plan under subdivision (7) of subsection 1 of this section *shall be prohibited from writing new business in the small employer market in this state for a period of five years from date of notice to the director*"(emphasis added). Section 379.938, RSMo was originally enacted in 1992, and the language at issue here, regarding when the five-year ban starts, has not been changed since its enactment over thirty years ago. In contrast, Sections 376.452 and 376.454 were both originally enacted in 2007.

Federal law also includes similar language regarding the impact of a carrier's withdrawal from the market. 45 C.F.R. 147.106, regarding guaranteed renewability of coverage, provides that a carrier discontinuing all coverage in the individual, small group, or large group market in a state must do so in accordance with state law, and only if the notice is provided to the state regulator and all plan sponsors or individuals at least 180 calendar days in advance, and that all such coverage is discontinued and not renewed. The five-year ban for carriers that withdraw from a market begins "on the date of discontinuation of the last coverage not renewed." 45 C.F.R. 147.106(d) (2). This language is virtually identical to the language in state law for the individual and large group markets, Sections 376.452 and 376.454, RSMo.

Analysis and Conclusion

In its request for a No-Action Letter, HIC acknowledges the discrepancy between state and federal law regarding guaranteed availability and the calculation of the five-year ban requirement after a market withdrawal. A carrier cannot comply with both state law and federal law regarding the guaranteed availability requirements of 45 C.F.R. 147.104 and the five-year ban on offering new coverage under 45 C.F.R. 147.106 and Section 379.938.2, RSMo. The Department also acknowledges these discrepancies, and agrees that the guaranteed availability provisions of 45 C.F.R. 147.104 continue to apply to HIC until the company ceases offering new coverage in Missouri. Therefore, the Department will not take action against HIC for continuing to offer (although by its own acknowledgement, not actively market) small group coverage in Missouri

until October 2023. Furthermore, the Department looks to federal law to calculate when the five-year ban on offering new coverage in Missouri begins. Therefore, the five-year ban on offering new coverage in the small group market in Missouri begins when HIC ceases offering new coverage in the state, or November 1, 2023. The five-year ban will end November 1, 2028.

For all of these reasons, I have determined that it is in the best interests of Missouri consumers to issue this no-action letter. As long as there is no change in any material fact or law, or the discovery of a material misrepresentation or omission made by HIC with regard to this request for a no-action letter, the Department of Commerce and Insurance will not bring an enforcement action under Section 374.046, RSMo against HIC for a violation of Section 379.938.2, RSMo. Nothing in this no-action letter shall prevent the Department from taking any future enforcement action relating to the financial condition of HIC, or in connection with the violation of any other laws aside from those specifically identified herein.

Sincerely,

A handwritten signature in blue ink that reads "Chlora Lindley-Myers". The signature is written in a cursive style with a large initial "C" and "M".

Chlora Lindley-Myers
Director