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Subject:

Eligibility restriction based on spousal eligibility through another employer.

Policy Statement:

A NYSHIP PA or PE cannot deny NYSHIP family coverage to an otherwise eligible employee based on the fact that the employee's spouse is also eligible for NYSHIP coverage through a different employer.

Relevant Statutory or Regulatory Authority

CSL section 163(4) authorizes PAs and PEs to elect to participate in NYSHIP by the adoption of a resolution by its governing body. Section 163(4) further provides that any PA or PE making such an election shall become a plan participant subject to and in accordance with the Department's regulations.

CSL Section 161(a)1 requires the Department to administer NYSHIP consistent with the terms of the collective bargaining agreements between the State and the unions that represent State employees.

4 NYCRR section 73.7 provides that a PA or PE may make NYSHIP coverage available to a class of its employees, or multiple classes of its employees, in accordance with Insurance Law. Additionally, Section 73.7 authorizes the Department to determine whether any purported class proposed by a PA or PE is a class permitted under the Insurance Law.

4NYCRR section 73.12 provides that the agreements between the State and the unions representing State employees shall apply to and be controlling over NYSHIP regulations.

Insurance Law 221(2)(a) recodified as section 4235(c)(1)(A) provides that a policy of group accident, group health, or group accident and health insurance may be issued to an employer upon certain conditions in order to insure all of the employer's employees or "all of any class or classes thereof determined by conditions pertaining to the employment or a combination of such conditions and conditions pertaining to the family status of the employee, for insurance coverage on each person insured based upon some plan which will preclude individual selection."

Background and Discussion:

A NYSHIP PA recently negotiated a provision in one of its collectively bargained agreements to restrict employees' eligibility to enroll for NYSHIP family coverage based on the employee's spouse's eligibility to enroll in NYSHIP through another employer. If the employee's spouse is *eligible* for NYSHIP family coverage through the State, another PA or a PE, the employee is only eligible to enroll for individual coverage under the PA's benefits program.

In administering NYSHIP, the Department is obligated to consider the economic impact of the policies and practices of PAs and PEs on NYSHIP as a whole and ensure that such practices do not affect NYSHIP adversely. An employer practice that disadvantages other employers who offer NYSHIP to their employees is detrimental to NYSHIP, as it may encourage those employers to discontinue or reject NYSHIP participation. NYSHIP's basic program design is the product of applicable bargaining agreements between the State and its bargaining units, with the program design extended by the Department to persons not represented by those bargaining units, including employees of PAs and PEs. A local collective bargaining agreement cannot alter NYSHIP eligibility rules to limit an otherwise eligible employee's right to enroll in NYSHIP in a manner not authorized under Civil Service Law and regulation, or in a manner inconsistent with the Department's extension of NYSHIP's program design to persons not subject to State collective bargaining agreements.

Furthermore, under the provisions of the laws and regulations cited above, a NYSHIP PA or PE cannot restrict an otherwise eligible employee's enrollment options based upon the employee's spouse's *eligibility* for health insurance coverage through a different employer because the employer is required to offer consistent terms of coverage to the class of employees to which the employee belongs. An employer is required to make NYSHIP coverage available to a class or classes of employees in order to ensure that coverage is based upon a plan which precludes the employer from selecting only those individual employees it chooses to cover within the designated class. A class must be "determined by conditions pertaining to the employment or a combination of such conditions and conditions pertaining to the family status of the employee....". Therefore, an employer cannot offer coverage based upon factors other than conditions pertaining to the employee's employment and family status, such as whether the employee is married, single, and/or has children. Once an employee has met the employment and family status criteria, denying coverage based upon a family member's "eligibility" for coverage from a different employer is not consistent with the Insurance Law's requirements. It restricts the employee's eligibility for coverage based on a condition (i.e.; whether the employee is married to another person with NYSHIP eligibility) that is not related to the employee's employment or family status.

It is permissible to limit dual family coverage under some circumstances. For example, the State limits its employees and retirees whose spouses also are eligible for NYSHIP coverage to one family enrollment, with the option to have an additional individual enrollment. The State's policy is based upon the spouse's actual enrollment in NYSHIP, not the spouse's eligibility to enroll. Further, the State does not determine which spouse is assigned the family coverage; that choice is left to the couple. If a couple fails to make a choice, the State enforces the family enrollment in effect for the longest period of time.

With respect to NYSHIP PAs and PEs, the General Information Books for Participating Agencies and Participating Employers advise that a PA or PE may permit multiple family enrollments, but not if one spouse is a State employee. The Books state: “*You may each have Family coverage if your employer permits two Family enrollments; however, if one spouse is **enrolled** as a New York State employee or retiree, only one of you can have Family enrollment. The other spouse may only elect Individual coverage.*” As stated, under the State’s practice, it is the enrollment, not the eligibility to enroll, which results in the restriction of the second spouse’s enrollment options to individual coverage.

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