

REPORT ON
THE MARKET CONDUCT EXAMINATION

OF

New England Life Insurance Company

as of

March 31, 2002

State of Rhode Island
Department of Business Regulation
Insurance Division

**The New England Life Insurance Company
Market Conduct Examination**

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Providence, Rhode Island

May 6, 2002

Honorable Marilyn Shannon McConaghy
Insurance Commissioner
State of Rhode Island

Dear Commissioner:

In accordance with your instructions and pursuant to the statutes of the State of Rhode Island, a Market Conduct Examination was conducted of:

**The New England Life Insurance Company
Boston, Massachusetts**

hereinafter referred to as the "New England."

The examination was conducted by Lautzenheiser & Associates ("L&A," the "examiners," or the "examination staff") of Hartford, CT. The examination involved an interview with designated compliance personnel to discuss data requests and examination methodology at the offices of the New England in Boston, MA. In addition, records were provided by the New England to the examination staff for off-site review.

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Introduction

L&A has been retained by the Director of the Rhode Island Department of Business Regulation (“DBR”) to conduct focused market conduct examinations of small employer health insurance carriers active in the Rhode Island market, under R.I. Gen. Laws §§ 27-50-1 *et seq.* (the “Act”) and the accompanying Regulation 82, in order to support the requirement for a periodic market evaluation under R.I. Gen. Laws § 27-50-9.

The market conduct examinations are a part of the process of developing an independent actuarial study and report. As provided in R.I. Gen. Laws § 27-50-9, “(t)he report shall analyze the effectiveness of the chapter in promoting rate stability, product availability, and coverage affordability. The report may contain recommendations for actions to improve the overall effectiveness, efficiency, and fairness of the small group health insurance marketplace. The report shall address whether carriers and producers are fairly actively marketing or issuing health benefit plans to small employers in fulfillment of the purposes of the chapter. The report may contain recommendations for market conduct or other regulatory standards or action.”

As part of this process, L&A was retained to conduct a focused market conduct examination of the New England related to market conduct under R.I. Gen. Laws §§ 27-50-1 *et seq.*

In the course of this examination, L&A reviewed the New England’s small employer health insurance rating, underwriting, and marketing practices, and compared these practices to the statutory and regulatory requirements. The purpose of R.I. Gen. Laws §§ 27-50-1 *et seq.*, as expressed in R.I. Gen. Laws § 27-50-2(a), was considered. A series of

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recommendations for the New England to consider in order to come into full compliance with the Act and the accompanying regulation was provided. These recommendations have been discussed with the New England. In many cases, the New England has undertaken corrective actions based on the recommendations. It is appropriate for the New England to identify any such corrective actions in their responses to this report.

This report on the market conduct examination of the New England is provided to the DBR and to the New England for the following purposes:

- Review by New England personnel to determine and document necessary corrective actions and to issue an official response to the findings to be included in the final report.
- Review by the Director and by DBR staff, to give them an opportunity to identify additional investigation required, and to evaluate the need for any additional regulatory standards or actions.

The conclusions contained in this report are based on the information that was made available by the New England, and on the understanding the examination staff developed based on reviewing documents provided by the New England, and on the conversations the examiners had with New England personnel. A sample of new business proposal and renewal premium calculations was reviewed to test and verify the information that was made available. The examination staff has discussed this report with DBR staff and with the New England.

Material developed during the course of this market conduct examination may be included in a future separate report describing the small employer health insurance marketplace, as required under R.I. Gen. Laws § 27-50-9.

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The Market Conduct Examination Report is, in general, a report by exception. Information relating to practices, procedures, and/or files subject to review during the examination has generally been omitted from the report if errors and/or non-compliance were not observed.

It should be noted that New England's personnel were extremely cooperative in providing information. This report could not have been as complete without their assistance.

Summary

The New England represents a very minor part of the Rhode Island small employer market. It currently insures only one Rhode Island small employer group, and that group has only one employee. The New England's small employer marketing focus is to offer health benefit plans as an accommodation to owners of small businesses, who are important customers for the New England's individual products. The New England writes its nationwide small employer business through a Rhode Island trust.

The New England's small employer health benefits business is administered by Health Plan Services, Inc. of Tampa, Florida ("HPS"). The New England reinsures its business 80% with Everest Reinsurance Company of Liberty Corner, New Jersey ("Everest Re"), and has a stop loss excess cover with ReliaStar Life Insurance Company of Minneapolis, Minnesota ("ReliaStar").

The New England has made a substantial effort at compliance with provisions of the Act relating to policy form requirements. Where compliance issues have been identified, New England personnel have been extremely cooperative and helpful in initiating action to resolve the issues.

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The following compliance issues were identified in the course of the examination:

- Failure to offer the statutory plans.
- Inadequate information about small employer health benefit plans available through their toll-free number.
- Rate manual not containing adequate information to calculate a rate.
- Rate manual not containing methodology for administering the 4-1 rate compression required by R.I. Gen. Laws § 27-50-5(a)(5); or for administering the second premium calculation required by R.I. Gen. Laws § 27-50-5(a)(6).
- Administrative fees exceeding the \$5 per employee per month maximum fee allowed by Regulation 82(5)(B)(4)(b), and the fees not being described in the rate manual.
- Use of rating variables not permitted by R.I. Gen. Laws § 27-50-5(a), including size of group and health status rating factors deviating by more than 10% from the adjusted community rate.
- Ceding 80% of the small employer business, as compared to the limit of 50% contained in R.I. Gen. Laws § 27-50-4(b)(3).
- Rating for statutory plans not bearing a logical relationship to rating for other health benefit plans.

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- Improper formula for measuring participation percent, in that employees with other creditable coverage are not removed from the denominator in order to determine the percent participation of a group.

- The Actuarial Certification filed in accordance with R.I. Gen. Laws § 27-50-5(h)(2) for calendar year 2001 not meeting the requirements of Insurance Bulletin Number 2002-4.

Many of these issues do not affect any groups, in that the New England has not written any new groups since the effective date of the Act, and has renewed only the one group it had prior to the effective date of the Act.

Examination Methodology

L&A has conducted a focused market conduct examination of the New England to evaluate compliance with R.I. Gen. Laws §§ 27-50-1 *et seq.* (“the Act”). This examination involved written data requests, interviews with company personnel, and examination of such forms, records and analyses that the examiners found necessary. The examination began with a meeting at the New England’s office in Boston on February 13, 2002, and continued with responses to questions and data requests from that date through April 18, 2002. New England personnel assigned to the examination were helpful, accommodating and well informed as to the company’s practices, and provided timely responses to the examination staff’s requests for information.

It should be recognized that one of the purposes of this market conduct examination was to identify areas where the New England may have failed to comply, and to assist the New England to come into compliance. Therefore, less attention was devoted in this examination report to those areas in which the New England complied with the Act.

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Where the examination staff found areas of practices and procedures that did not comply with the Act, the examination staff recommended changes to those practices and procedures to enable the New England to comply with the Act. These recommendations are shown in the text of the report after the discussion of the relevant issues. The recommendations are also summarized in the last section of this report.

Carrier Overview

The New England is a wholly owned subsidiary of the Metropolitan Life Insurance Company (“MetLife”). The New England’s market for health plans consists of small employers and affluent individuals. The New England considers the small group health products as a “door opener” for its other products, and therefore as an important part of its marketing portfolio. The New England markets its products through a general agency system.

The New England offers group coverage to the 2-50 life group market in 42 states. They believe that they are not very competitive in the Rhode Island market primarily because they cannot match the provider discounts that are available to their competitors.

The New England uses a multiple employer trust (“MET”) to provide insurance coverage to its nationwide block of small group clients. The trust is sited in Rhode Island.

Presently, the New England has only one participating small employer group in Rhode Island. This group joined the MET in March 1990. As of February 2002 this group had one employee enrolled in its health benefit plan. The New England indicated that no Rhode Island employers have accepted proposals to join the MET since the effective date of the Act. The New England has issued 4 new business proposals for coverage to Rhode Island small employers since the effective date of the rating provisions of the Act, October 1, 2000.

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- \$40 copay plus 40% coinsurance for brand name prescriptions not on the formulary.

Prescriptions from non-preferred pharmacies are a covered expense and are subject to the plan deductible and out-of-network coinsurance. Mail order prescription service is also available. A richer pharmacy benefit is available at an extra premium cost.

The New England, as part of its offering to small employers, also makes available dental products, long term disability, flexible spending accounts, weekly disability, group life, and accidental death and dismemberment insurance.

The New England is in the process of re-writing and updating currently filed policy forms. The New England has a general certificate form used in all states and a rider to reflect plan differences for Rhode Island. The certificate for the statutory Basic plan was filed as required, and was approved by the DBR. The Standard and Economy plans were filed in 1993. Some health plan forms have also been filed in Rhode Island on the paper of MetLife, the New England's parent. The New England indicated that they intend to write Rhode Island health insurance business in the future only on New England forms.

The New England has an administration arrangement with HPS, in Tampa, Florida. Administrative services provided by HPS include marketing support, underwriting, enrollment, billing, claim adjudication, and management reporting. HPS has been in business for over 25 years and provides such services for various insurers. HPS is compensated via two different means. The New England pays HPS a fee that includes all HPS's third party administrative services and a component for access to the PHCS PPO network and utilization management. In addition, HPS adds an administrative fee of \$30 per month to the billed premium of any participating employer.

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Regulation 82(5)(B)(4)(b) allows a small employer carrier to charge a separate administration fee, provided such a fee does not exceed \$5 per subscriber per month. R.I. Gen. Laws § 27-50- 3(ee) defines “Premium” as all money paid by the small employer as a condition of coverage, including any fees or other contributions associated with the health plan. The fee of \$30 per group per month added by HPS would therefore exceed the maximum of \$5 per month per employee for any group with fewer than six subscribers. The New England had one group with one subscriber that was in force on the effective date of the Act. This case terminated March 1, 2002. The fee applicable to this group did not comply with Regulation 82(5)(B)(4)(b).

Recommendation 1: It is recommended that the New England limit the administrative fee charged by HPS to no more than \$5 per subscriber per month, and that it include a description of the fee in its rate manual, as required by Regulation 82(5)(B)(4)(b).

Regulation 82(10)(C) requires that a small employer carrier maintain a toll-free number available for a small employer to call to obtain information about health insurance products available to small employers and how to apply for coverage. The New England provided 1-800-654-1731 as its toll-free number. An examiner called this number. The number connects to New England’s customer service function at HPS. The examiner went through several menus, none of which related to the purpose of the call, which was to obtain information about health plans available to a small employer. When a person ultimately responded, the examiner was told that the call would need to be switched to the sales department. The examiner spoke with a representative in the sales department and was told that the New England did not have a PPO plan in Rhode Island and that therefore a plan from the New England would be quite expensive. The producer sales kit provided to the examiners included descriptions of various PPO plans. When asked, the HPS sales representative provided the name and phone number of a Providence, Rhode Island agent for the New England. The examiner contacted the New England agent and asked for information about the New England’s health plans. The agent indicated that the

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only plans available were indemnity plans with various deductibles and either 60/40% or 80/20% coinsurance. The agent strongly suggested considering other carriers since the New England's indemnity plan would be expensive. The examiner asked about lower cost plans and was told that Blue Cross had low cost plans. The agent mentioned the Blue Cross Essential Plans (the statutory Economy and Standard plans). The agent indicated that these plans were not available through the New England but suggested the caller consider a high deductible plan.

Recommendation 2: It is recommended that the New England provide a toll free number that provides the information required by Regulation 82(10)(C) and that the New England provide HPS and New England agents an updated schedule of the New England's plans available in Rhode Island.

The examiners also noted that the marketing material did not include any information on the statutory plans. It is required by R.I. Gen. Laws § 27-50-7(b)(1) that the carrier offer all health plans that it actively markets, including at least the three statutory plans. The New England's marketing activity does not comply with this requirement.

Recommendation 3: It is recommended that the New England actively offer all health plans, including the statutory plans, to all small employers.

Other than as noted above, the examination staff did not find that the New England engages in practices that would limit the ability of small employers or employees or dependents of small employers to obtain health insurance.

Reinsurance

Unless otherwise authorized by the Director of the DBR, R.I. Gen. Laws § 27-50-4(b)(3) prohibit a small employer carrier from ceding in excess of 50% of the risk for small

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employer health plans delivered in Rhode Island. The New England has quota share and excess loss reinsurance arrangements in effect that can be summarized as follows:

- An 80% quota share of the first \$1 Million of risk on any one individual is ceded to reinsurer Everest Re.
- The excess of \$1 Million per person is ceded to ING Reliastar.

The New England's reinsurance ceded on small employer health plans issued in Rhode Island exceeds the statutory maximum allowed by the Act. The examination staff is not aware of an exception to this provision of the Act that was authorized by the Director of the DBR.

Recommendation 4: It is recommended that the New England either recapture an appropriate amount of the risk ceded for Rhode Island small employer business to comply with the reinsurance limitation specified in R.I. Gen. Laws § 27-50-4(b)(3) or obtain authorization from the director for its current ceding arrangement.

Compliance Structure

Responsibility for compliance with the Act is under the direction of Ms. Denise Brisbane, Assistant Counsel at the New England. Lora Gross-Kostka, R.N. is responsible for policy form development and filing. Ms. Gross-Kostka reports to Sharon McNeill, Second Vice President, Product Management and Sales. Product pricing is the responsibility of Dianna Perrie, FSA, MAAA. Ms. Brisbane, Ms. Gross-Kostka and Ms. Perrie were the New England representatives at the examiners' meeting at the New England's offices on February 13, 2002.

R.I. Gen. Laws § 27-50-5(h)(2) requires that a small employer carrier annually file an actuarial certification certifying that the carrier is in compliance with R.I. Gen. Laws §§

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27-50-1 *et seq.* and that the carrier's rating methods are actuarially sound. The DBR issued Insurance Bulletin Number 2002-4 to prescribe the form and manner and to specify the information required to be provided by the small employer carrier pursuant to R.I. Gen. Laws § 27-50-5(h)(2). The Actuarial Certification for calendar year 2000 was prepared by Rachel Machera, FSA, MAAA. The Actuarial Certification for the New England for 2001 was prepared and signed by Ms. Perrie. The Actuarial Certification for 2001 does not meet the requirements of R.I. Gen. Laws § 27-50-5(h)(2) and Insurance Bulletin Number 2002-4 (the "Bulletin") in the following ways:

- The Actuarial Certification does not include a statement that it was prepared in accordance with Actuarial Standard of Practice No. 26 of the American Academy of Actuaries, as required by the Bulletin.
- The certification is limited to the statement that "rates charged small groups in the State of Rhode Island for calendar year 2001 by the Metropolitan Life Insurance Company are in compliance with Chapter 27-50 of the Rhode Island Insurance Laws and our rating methods are actuarially sound."
 - This statement erroneously references the Metropolitan Life Insurance Company, while the certification is intended for the New England Life Insurance Company.
 - The certification fails to address areas of R.I. Gen. Laws §§ 27-50-1 *et seq.*, other than compliance with the rating provisions of this chapter, as required by Sections C 2. of the Bulletin.
- The certification fails to identify various instances in which the New England does not comply with the requirements of R.I. Gen. Laws §§ 27-50-1 *et seq.*, as noted in this report and required to be included in the certification by Section C.3. of the Bulletin.

Recommendation 5: It is recommended that the New England review the requirements for the Actuarial Certification, as specified in R.I. Gen. Laws § 27-50-5(h)(2) and the

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Bulletin, and submit a revised certification for calendar year 2001 in the required form and manner to the DBR.

Rating Methodology

The New England rates their nationwide small employer business as one pool, except for business in certain states where they have enough experience to be statistically credible. This approach seems reasonable given that the New England has only one subscriber in the state of Rhode Island. Rates for all health plans in the nationwide pool are given an across the board rate adjustment to produce the desired target loss ratio. The technical work is performed by Ms. Perrie. A committee composed of representatives from Marketing, Actuarial and the reinsurer, Everest Re, subsequently reviews her work.

Regulation 82(5)(B)(2) provides that differences in base rates for health plans shall be based solely on reasonable and objective differences in the design and benefits of the health benefit plans. The New England has developed a pricing model that is based on the Milliman USA Health Cost Guidelines and PHCS preferred provider network discounts. This pricing model is the source of all benefit plan rate relationships. No adjustments are made based on the assumed health status of the groups that may buy particular plans. The New England then adjusts the overall rate level to a point needed to support expected claim experience, expenses, and required profit margin. Based on the description provided to the examiners, the New England's methodology for determining base rates and health plan rate relationships complies with the requirements of Regulation 82(5)(B)(2).

Administrative expenses, profit, commissions, and sales expenses are reflected as a constant percentage of premium for all small employer business. This complies with the requirement of Regulation 82(5)(B)(5), which requires that administrative expenses be

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allocated to the statutory plans on a no less favorable basis than expenses are allocated to other health plans.

The New England's rates are developed on a quarterly basis, and applied to all groups obtaining insurance in that quarter without further effective date adjustment.

The New England's rate manual includes various rate tables, generally applicable to different geographic areas in the US. Geographic area is not permitted as a small employer group rating variable within Rhode Island under R.I. Gen. Laws § 27-50-5(a)(1). However, the New England has all of Rhode Island within a single geographic rating area, hence satisfying the requirements of R.I. Gen. Laws § 27-50-5(a)(1).

The New England provided copies of two rate manuals that were put in place since the effective date of the Act for the examiners to review. The first was for new business proposals and renewal rates effective beginning March 1, 2001 through May 31, 2001, and the second was for new business proposals and renewal rates effective from March 1, 2002 through May 28, 2002.

The March 1, 2001 manual contained the following provisions that do not comply with the rating provisions of the Act and the accompanying Regulation:

- Rates for one-employee groups are loaded approximately 15% by increasing the area factor three 5% steps. Group size is not a permitted rating variable under R.I. Gen. Laws § 27-50-5(a)(1). This non-complying practice was eliminated with the March 1, 2002 rate manual.

- Health status adjustments are permitted by the rate manual within a range of 95% to 155%. Under R.I. Gen. Laws § 27-50-5(a)(2), an adjustment for health status

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cannot cause rates to vary more than 10% up or down from the adjusted community rate.

- Maternity is written using one of three rating “options” based on group size. Maternity coverage is not available to one-employee groups. Varying benefits and rates based on group size is not permitted by R.I. Gen. Laws § 27-50-5(a)(1).

- The manual does not contain any methodology for compliance with the 4-1 rate compression required by R.I. Gen. Laws § 27-50-5(a)(5), although it should be noted that the rates are within a range such that only single male employees under 30 and single male employees over age 60 have rates that vary by more than four-to-one, and no groups appear to have been quoted that were not in compliance with the 4-1 compression. The New England also satisfies this requirement by default because it has only one in force group. In order to accommodate other groups, however, the New England will need to develop a specific rating methodology to comply with the current 4-1 and the prospective 2-1 compression requirement. The New England has indicated to the examiners that they intend to apply the rate structure the New England currently uses in Massachusetts, which requires the 2-1 rate compression, in the event additional small employer groups are written in Rhode Island.

- The manual does not contain any methodology for compliance with the second rate calculation required by R.I. Gen. Laws § 27-50-5(a)(6), although it should be noted that it does not appear that the rate renewal for the New England’s single small employer plan would have generated a lower rate under the second rate calculation.

The March 1, 2002 manual addressed some of these problems:

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- It was noted above that the March 1, 2001 rate manual contained a load for one-life groups, which was accomplished by specifying a different area table for one-life groups. Since the only small employer group the New England has on the books is a one-employee group, the New England has revised its area rate for Rhode Island business to area 5 from area 2, thereby incorporating for all groups the three area tier load that had previously been used for one-employee groups only.
- Since the only small employer group the New England has on the books had a prior health status rating of 150%, the New England revised its health status rating variables to run from a minimum of 125% to a maximum of 150% in an attempt to satisfy the requirement that an adjustment for health status vary not more than 10% from the base rate. In effect, the New England defined a base rate for Rhode Island at 137.5% of the area 5 rates, thereby varying about an effective index rate of approximately 137.5% of its standard area 5 rates. While this creates an environment in which health status rates can vary only 10% up or down from a “standard” rate, it implies an increase in base rates in one year of approximately 97%, including the New England’s across the board rate increase, the institutionalization of the higher area factor, and the increase in the median health status factor. This calls into question whether the New England’s adjusted community rates applicable to Rhode Island are in fact based on commonly accepted actuarial assumptions and are in accordance with sound actuarial principles, as is required by R.I. Gen. Laws § 27-50-5(h)(1). The manual rates are instead designed to maximize the rates for the one existing group, without consideration of the appropriate level of rates for the entire Rhode Island small employer market. The New England has indicated that this compliance issue will be addressed, at least in part, by the June 2002 rate manual, which will limit the adjustment for health status to a 10% corridor on either side of the New England’s base rates.

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Recommendation 6: It is recommended that the New England review its Rhode Island base rates to ensure that the resulting rates are consistent with actuarial assumptions and actuarial principles, as is required by R.I. Gen. Laws § 27-50-5(h)(1).

The March, 2002 rate manual did not address the problems of varying maternity rates by size of group, of unequal access to maternity benefits by size of group, or of the compliance methodology for the 4-1 rate compression or the second rate calculation.

Recommendation 7: It is recommended that the New England eliminate the practice of varying its maternity coverage availability and rates by the number of employees in a small employer group.

Recommendation 8: It is recommended that the New England develop a methodology for implementing the 4-1 and 2-1 compression of premium rates, as required by R.I. Gen. Laws § 27-50-5(a)(5) and include that in the rate manual applicable to Rhode Island business.

The examiners reviewed two new business proposal quotes issued for effective dates in the first quarter of 2002. In this way, it was possible to verify that, prior to March 1, 2002, the New England was using area rates that varied by size of group, and health status rating factors that varied by more than 10% from adjusted community rates. These new business proposal quotes illustrated the practice of rating groups of two or more employees in geographic area 2 and a one-employee group in area 5. They also illustrated the use of a health status factor of 100% for new business, when the New England's renewal group was rated at 150%. Case size is not a rating variable that is allowed by R.I. Gen. Laws § 27-50-5(a)(1) and adjustment for health status is not allowed to vary by more than 10% from the base rate by R.I. Gen. Laws § 27-50-5(a)(2).

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The New England's rating variables include age, gender, and family composition, as permitted by R.I. Gen. Laws § 27-50-5(a)(1). Age factors are in five-year age brackets, with the lowest bracket those below age 30 and the highest age bracket for age 65 and over. This structure is permitted under R.I. Gen. Laws § 27-50-5(a)(3). R.I. Gen. Laws § 27-50-5(a)(4) allows a company to have separate factors to recognize whether Medicare is primary or secondary for a group. The factors published by the New England in its rate manual for over age 65 individuals assume that Medicare is primary. If Medicare is secondary, the rates in the 60-64 age bracket are increased a certain percentage to obtain rates for over age 65 Medicare secondary individuals. The New England's age and gender rating factors meet statutory requirements, except that the adjustment used for Medicare secondary groups is not included in the rate manual. This does not comply with the Regulation 82(A)(4), which requires that premium rates charged small employers be computed solely from the rate manual.

Recommendation 9: It is recommended the New England revise its rate manual to include age factors (or instructions to calculate such age factors) applicable to individuals for whom Medicare is secondary.

Recommendation 10: It is recommended that the New England limit rate adjustments for health status to no more than 10% above or below the adjusted community rate, as is required by R.I. Gen. Laws § 27-50-5(a)(2).

As noted above, R.I. Gen. Laws § 27-50-5(a)(6) provides for premium rates to be limited to the lower of the premium rate calculated from the rate manual and the results of a second rate calculation. The process for the second rate calculation is described fully in Regulation 82(5)(B)(3)(b). The purpose of the second rate calculation is to limit the change in premium rates in any one year due to rate changes mandated by the Act. This provision of the Act will expire under current law on September 30, 2002. The New England's rate manual does not provide for a second rate calculation and hence the rating

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methodology does not comply with R.I. Gen. Laws § 27-50-5(a)(6) and Regulation 82(5)(B)(3)(b).

Recommendation 11: It is recommended that the New England reflect a methodology in its rate manual for applying the second rate calculation required by R.I. Gen. Laws § 27-50-5(a)(6) and described more fully in Regulation 82(5)(B)(3)(b).

While the New England has provided information related to the development of its rates and their application, this information is not adequate in its current form to be considered a rate manual as required by R.I. Gen. Laws § 27-50-5(h) and described more fully in Regulation 82(5). Regulation 82(5)(A)(4) requires that a rate be calculable from the rate manual. Items missing from the rate manual provided to the examiners include the following:

- Formula to calculate rates when Medicare is secondary;
- Description for calculating the health status tier and health status ratings applicable to Rhode Island business;
- Steps to be followed to ensure that the rates satisfy rate compression requirements;
- Methodology for implementing the second rate calculation required by with R.I. Gen. Laws § 27-50-5(a)(6); and

Recommendation 12: It is recommended that the New England revise its Rate Manual to include documentation of rating practices, as required by Regulation 82(5).

Underwriting Methodology

The New England has a minimum participation requirement. Minimum participation underwriting requirements are permitted, but not required, by R.I. Gen. Laws § 27-50-

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7(d)(9), but are limited to 100% participation for groups of 10 or fewer eligible employees and 75% participation for groups with more than 10 eligible employees. The New England's minimum participation requirements are in compliance with the minimum participation requirements allowed under the Act, with the following exception: the New England requires that if the employer pays 100% of the cost of coverage, 100% participation is required, regardless of the size of the group. For groups with more than ten employees, they are not permitted to require a higher participation than 75%. This is not an immediate practical issue, in that they have no groups of more than ten employees, that relatively few employers pay 100% of the cost of insurance, and that if an employer did pay 100% of the cost of insurance, relatively few employees without other creditable coverage would be likely to opt out. Nevertheless, the New England's requirement does not comply with R.I. Gen. Laws § 27-50-7(d)(9).

Recommendation 13: It is recommended that the New England revise its participation requirement such that it complies with R.I. Gen. Laws § 27-50-7(d)(9), which limits participation requirement levels by size of group.

The New England requires a minimum contribution of 25% by the employer toward the cost of the health plan. This underwriting requirement by the New England complies with R.I. Gen. Laws § 27-50-7(d)(9), which allows the carrier to establish a minimum contribution requirement, as long as it is applied uniformly to all small employer business.

The New England permits a waiting period as a contract provision. The New England's Participating Employer Application allows the selection of 0, 1, 2, or 3 months for current or future employees, at the employer's option. The New England does not require a waiting period or affiliation period. This complies with R.I. Gen. Laws § 27-50-7(d)(7)(d)(2)(iv), which limits the extent to which a small employer carrier can impose a waiting period.

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For the purpose of health plan participation requirements; the New England takes into consideration, in the denominator of the ratio, all employees who are eligible except those who waive coverage because they are covered as dependents by a spouse. The New England considers those waiving for other reasons as counting toward participation. R.I. Gen. Laws § 27-50-7(d)(9)(iii) requires that the New England not consider any employees who have creditable coverage in the application of the minimum participation requirement. There may be employees who have creditable coverage by means other than being covered as a dependent by their spouse. Hence, the New England's participation requirement does not comply with R.I. Gen. Laws § 27-50-7(d).

Recommendation 14: It is recommended that the New England amend its formula for determining participation percentage so that it does not include employees waiving coverage because of having other creditable coverage as eligible employees.

The examiners reviewed various forms used by the New England in the course of conducting its small employer business. Based on this review, the examiners concluded that the New England has not developed a process to gather adequate documentation to establish whether a group is a small employer as defined in R.I. Gen. Laws § 27-50-7(a) and, after October 1, 2002, R.I. Gen. Laws § 27-50-3(II). The New England also has not gathered adequate documentation to manage the process of determining whether a renewing small employer group may grow large enough to be eligible for notification that it may elect to be considered a large group, or whether a renewing large employer group may qualify to be treated as a small employer as required to comply with Regulation 82(3)(E). Given that the New England currently does not have any premium paying small employers, this is not a significant issue. However, the New England should be prepared to develop and implement a process that meets the requirements of the Act in the event that new small employer groups are underwritten in Rhode Island.

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Recommendation 15: It is recommended that the New England gather and analyze appropriate eligibility data to administer the requirements of the Act.

Pre-existing conditions limitations are permitted but not required by R.I. Gen. Laws § 27-50-7(d)(1) and the carrier cannot apply a pre-existing condition limitation for more than six months after the effective date of coverage. R.I. Gen. Laws § 27-50-3(dd)(2) provides that a pre-existing condition does not include a condition which was first treated or diagnosed while the person was covered under a health plan, provided that the prior creditable coverage was continuous to a date not more than 90 days prior to enrollment in the new health plan. The New England has indicated to the examiners that it intends to attach a special rider, (form SP-481 RI) to all certificates that are issued to employees of participating Rhode Island small employers. Special rider form SP-481 RI contains a pre-existing conditions limitation that meets the requirements of the Act.

The marketing material provided by the New England includes a producer information package. One of the brochures contained in this package includes the following statement: “ Be sure the employer carefully reads the pre-existing conditions and plan limitations and exclusions contained in this brochure.” However, the marketing material provided by the New England to the examination staff does not specify any benefit limitations for pre-existing conditions. An Administrative Information brochure also discussed limitations and exclusions, with no reference to pre-existing conditions limitations. In the Employer Application the employer is required to certify that, “I have discussed eligibility, participation requirements, and pre-existing conditions provisions with the agent or broker...” It is required by R.I. Gen. Laws § 27-50-5(g)(3) that the carrier disclose in its marketing material any provisions relating to pre-existing conditions. The New England’s marketing material does not disclose any such information even though the employer is requested to certify in the application to the effect that information related to pre-existing condition limitations has been disclosed. The New England’s marketing material does not comply with R.I. Gen. Laws § 27-50-5(g)(3) because the required disclosure is not made.

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Recommendation 16: It is recommended that the New England's marketing and proposal forms clearly indicate its policies with respect to pre-existing conditions exclusions in order to comply with R.I. Gen. Laws § 27-50-5(g)(3).

Regulation 82(10)(b)(3)(a) requires that a small employer carrier produce new business proposals within ten working days, and request additional information from an applicant within five working days if adequate information to produce a new business proposal is not included in the application. HPS has committed to the New England to process small employer new business proposal requests within 24 hours of each request. A producer can request a new business proposal by either phone or fax. At this time, however, there is no tracking mechanism in place to measure the time span between the date a new business proposal is requested and the date that a new business proposal is released by the New England. The examiners found no evidence to indicate that the New England has failed to meet the requirements of Regulation 82(10)(b)(3)(a).

Recommendation 17: It is recommended that the New England establish standards that meet the turnaround requirements of Regulation 82(10)(b)(3)(a) and that they develop a new business proposal tracking system to monitor compliance with the proposal timing standards of ten working days for new business proposals, and five working days to request additional information if adequate information to produce a new business proposal is not included with an application.

Availability and Rating of Statutory Plans

The New England filed certificates for the Standard and Economy plans with the DBR in 1993 and the forms were subsequently reviewed and approved for use. The New England filed the certificate for the Basic plan and it was approved on or about January 11, 2002.

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Rates for the statutory plans are included in the New England's rate manual. However, the rate relationship for the Basic plan seems incorrect, as it is slightly lower in premium than the Standard plan. The New England's rates for the Basic and Standard plans are both set at about 79% of the rates for the New England's most common plan. This is a somewhat higher rate relationship than might be expected for the Standard plan, which was designed to be low cost. The Basic plan is much richer than the Standard and Economy plans and is expected to have a rate closer to the most common commercial plan. The New England has informed the examiners that one reason for the apparent inconsistency in rating is that the Basic plan has been designed as a PPO plan, while the Standard plan has not.

Recommendation 18: It is recommended that the New England review its rates for the statutory plans to ensure that they are priced on a basis consistent with the pricing for other plans.

The New England has not sold any Basic, Standard or Economy plans. The New England's materials do not provide information on the benefits or rates for the Statutory plans. Failure to provide information on the statutory plans is a violation of R.I. Gen. Laws § 27-50-7(b) and Regulation 82(10)(A) and Regulation 82(10)(B).

Recommendation 19: It is recommended that the New England, in order to comply with R.I. Gen. Laws § 27-50-7(b) and Regulation 82(10)(A) and Regulation 82(10)(B), provide, as part of any small employer new business proposal and renewal package, descriptive information for all plans that the New England currently markets to small employers, including the statutory plans.

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Contractual Compliance

The examination staff reviewed samples of the New England's group insurance certificates for compliance with requirements of R.I. Gen. Laws §§ 27-50-1 *et seq.* and Regulation 82. The examination staff did not find any exceptions other than the issue related to the pre-existing conditions exclusion provision mentioned above. The examination staff also reviewed recently filed certificates for the Rhode Island Basic plan and the new Rhode Island state specific rider (form SP-48 RI Rev Jan2002). The certificates are complete and in compliance with the requirements of the Act.

Regulation 82(6)(B)(2) sets requirements for collecting waiver forms from each eligible employee or dependent who declines coverage. The New England collects the waiver information on the Application for Insurance form. The New England's forms meet these requirements except in the following ways:

- If an employee waives coverage, but refuses to sign a waiver form, the Act requires that the employer provide a certification that the individual who declines the offer was informed of the availability of coverage under the health plan. The New England's form does not provide the required certification. The New England does not provide any instructions or information regarding how the required certification is to be obtained.
- The waiver form does not contain a statement informing the eligible employee of their special enrollment rights under R.I. Gen. Laws § 27-50-7(d)(7) and (8), that in the event they have waived coverage because of other creditable coverage, and they subsequently lose that other creditable coverage, they are allowed to enroll within a 30-day period.

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Recommendation 20: It is recommended that the New England amend its coverage waiver form to include a statement informing the waiving employee of special enrollment rights provided by R.I. Gen. Laws § 27-50-7(d)(7) and (8).

Recommendation 21: It is recommended that the New England either include on the waiver form, or develop an administrative procedure to obtain the employer certification required by Regulation 82(7)(B)(2)(d), in the event that an employee refuses to sign the waiver form.

The New England's definition of dependent includes dependent students to age 25. This complies with the requirement under R.I. Gen. Laws § 27-50-3(k) that dependent students be covered at least to age 25.

Conclusions

The New England has made a concerted effort to conduct its business in Rhode Island in accordance with the statutory requirements.

The following primary areas of non-complying practices were identified, all of which are discussed in detail elsewhere in the report:

- Failure to offer the statutory plans;
- Administrative fees greater than \$5 per employee per month;
- Pre-existing conditions provision exceeding the allowed period of six months;
- Health status adjustments greater than a 10% adjustment from the adjusted community rate;
- Use of rating factors based on size of group;
- Inadequate and inconsistent information available through the toll-free number about the availability of health benefit plans and how to obtain them;

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- Failure to retain at least 80% of the risk for Rhode Island small employer plans;
and
- Failure to maintain a rate manual that adequately describes the methodology for calculating rates.

Overall, the examination staff was pleased with the documentation provided by the New England in response to requests by the examiners. While many of the comments in this report have focused on shortcomings, it should not be overlooked that the New England has made substantial compliance efforts and maintains a strong interest in complying with the Act.

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Summary of Recommendations

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|---|-------------|
| 1. It is recommended that the New England limit the administrative fee charged by HPS to no more than \$5 per subscriber per month, and that it include a description of the fee in its rate manual, as required by Regulation 82(5(B)(4)(b). | 12 |
| 2. It is recommended that the New England provide a toll free number that provides the information required by Regulation 82(10)(C) and that the New England provide HPS and New England agents an updated schedule of the New England's plans available in Rhode Island. | 13 |
| 3. It is recommended that the New England actively offer all health plans, including the statutory plans, to all small employers. | 13 |
| 4. It is recommended that the New England either recapture an appropriate amount of the risk ceded for Rhode Island small employer business to comply with the reinsurance limitation specified in R.I. Gen. Laws § 27-50-4(b)(3) or obtain authorization from the director for its current ceding arrangement. | 14 |
| 5. It is recommended that the New England review the requirements for the Actuarial Certification, as specified in R.I. Gen. Laws § 27-50-5(h)(2) and the Bulletin, and submit a revised certification for calendar year 2001 in the required form and manner to the DBR. | 15 |

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| 6. It is recommended that the New England review its Rhode Island base rates to ensure that the resulting rates are consistent with actuarial assumptions and actuarial principles, as is required by R.I. Gen. Laws § 27-50-5(h)(1). | 20 |
| 7. It is recommended that the New England eliminate the practice of varying its maternity coverage availability and rates by the number of employees in a small employer group. | 20 |
| 8. It is recommended that the New England develop a methodology for implementing the 4-1 and 2-1 compression of premium rates, as required by R.I. Gen. Laws § 27-50-5(a)(5) and include that in the rate manual applicable to Rhode Island business. | 20 |
| 9. It is recommended the New England revise its rate manual to include age factors (or instructions to calculate such age factors) applicable to individuals for whom Medicare is secondary. | 21 |
| 10. It is recommended that the New England limit rate adjustments for health status to no more than 10% above or below the adjusted community rate, as is required by R.I. Gen. Laws § 27-50-5(a)(2). | 21 |
| 11. It is recommended that the New England reflect a methodology in its rate manual for applying the second rate calculation required by R.I. Gen. Laws § 27-50-5(a)(6) and described more fully in Regulation 82(5)(B)(3)(b). | 22 |

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12. It is recommended that the New England revise its Rate Manual to include documentation of rating practices, as required by Regulation 82(5).	22
13. It is recommended that the New England revise its participation requirement such that it complies with R.I. Gen. Laws § 27-50-7(d)(9), which limits participation requirement levels by size of group.	23
14. It is recommended that the New England amend its formula for determining participation percentage so that it does not include employees waiving coverage because of having other creditable coverage as eligible employees.	24
15. It is recommended that the New England gather and analyze appropriate eligibility data to administer the requirements of the Act.	25
16. It is recommended that the New England's marketing and proposal forms clearly indicate its policies with respect to pre-existing conditions exclusions in order to comply with R.I. Gen. Laws § 27-50-5(g)(3).	26
17. It is recommended that the New England establish standards that meet the turnaround requirements of Regulation 82(10)(b)(3)(a) and that they develop a new business proposal tracking system to monitor compliance with the proposal timing standards of ten working days for new business proposals, and five working days to request additional information if adequate information to produce a new business proposal is not included with an application.	26

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| 18. It is recommended that the New England review its rates for the statutory plans to ensure that they are priced on a basis consistent with the pricing for other plans. | 27 |
| 19. It is recommended that the New England, in order to comply with R.I. Gen. Laws § 27-50-7(b) and Regulation 82(10)(A) and Regulation 82(10)(B), provide, as part of any small employer new business proposal and renewal package, descriptive information for all plans that the New England currently markets to small employers, including the statutory plans. | 27 |
| 20. It is recommended that the New England amend its coverage waiver form to include a statement informing the waiving employee of special enrollment rights provided by R.I. Gen. Laws § 27-50-7(d)(7) and (8). | 29 |
| 21. It is recommended that the New England either include on the waiver form the employer certification required by Regulation 82(7)(B)(2)(d), or develop an administrative procedure to obtain it, in the event that an employee refuses to sign the waiver form. | 29 |

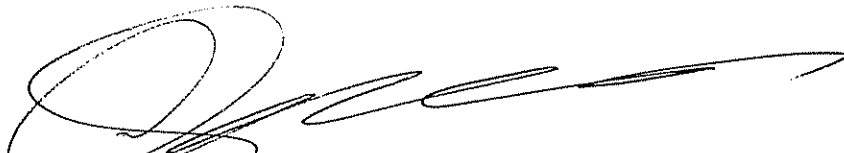
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