This rule was filed as 13 NMAC 10.5.

TITLE 13 INSURANCE
CHAPTER 10 HEALTH INSURANCE
PART 5 GROUP COVERAGE DISCONTINUANCE AND REPLACEMENT

13.10.5.1 ISSUING AGENCY: New Mexico State Corporation Commission [Public Regulation Commission], Department of Insurance, Post Office Box 1269, Santa Fe, NM 87504-1269.
[11/1/98; Recompiled 11/30/01]

13.10.5.2 SCOPE: This rule applies to all group insurance contracts provided by an insurance company or a nonprofit health care plan and all group health maintenance organization contracts issued for delivery in this state, renewed, amended, or under which the level of benefits or premium is altered or modified, covering persons as employees of employers or as members of unions or associations.
[11/1/98; Recompiled 11/30/01]

13.10.5.3 STATUTORY AUTHORITY: Sections 59A-18-16.1, 59A-46-30 and 59A-47-33 NMSA 1978.
[11/1/98; Recompiled 11/30/01]

13.10.5.4 DURATION: Permanent.
[11/1/98; Recompiled 11/30/01]

13.10.5.5 EFFECTIVE DATE: November 1, 1998, unless a later date is cited at the end of a section or paragraph.
[11/1/98; Recompiled 11/30/01]
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

13.10.5.6 OBJECTIVE: The purpose of this rule is to set forth the requirements for discontinuance and replacement of group contracts.
[11/1/98; Recompiled 11/30/01]

13.10.5.7 DEFINITIONS: As used in this rule:

A. **"accrued liability"** means liabilities established on the date an injury is sustained or an illness commences.

B. **"group contract"** means a contract for health or disability insurance or an HMO contract made with an employer or other entity that covers a group of persons, identified as individuals, because of their relationship to the covered entity.

C. **"HMO"** means health maintenance organization as defined in 59A-46-2 NMSA 1978.

D. **"prior carrier"** means the carrier of group coverage provided by the employer or other entity immediately prior to the effective date of discontinuance and which has or has not been replaced by a succeeding carrier's coverage plan.

E. **"succeeding carrier"** means the carrier of group coverage provided by an employer or other entity which is issued within ninety days after the discontinuance of the prior plan.

F. **"totally disabled"** means:

(1) for covered employees, the inability because of injury or disease to perform regular or customary occupational duties; and after benefits have been paid for twenty-four months, the inability to perform the duties of any gainful occupation for which the employee is reasonably fitted by training, education, or experience; or

(2) for dependents or retired employees, the inability because of injury or disease to engage in substantially all of the normal activities of a person in good health of like age and sex.
[11/1/98; Recompiled 11/30/01]

13.10.5.8 EFFECTIVE DATE OF DISCONTINUANCE FOR NON-PAYMENT OF PREMIUM:

A. If a group contract provides for automatic discontinuance of the contract after a premium has remained unpaid through the grace period allowed for the payment, the carrier shall be liable for valid claims for

covered losses incurred prior to the end of the grace period. The carrier shall, however, be entitled to the premium due for coverage provided during the grace period.

B. If the carrier treats the group contract as continuing in force after the end of the grace period by recognizing claims incurred after the end of the grace period, the carrier shall be liable for valid claims for losses beginning prior to the effective date of written notice of discontinuance to the group contract holder responsible for making premium payments to the carrier. The effective date of discontinuance shall not be prior to midnight at the end of the third scheduled work day after the date upon which the notice is delivered to the last known address of the policyholder.

[11/1/98; Recompiled 11/30/01]

13.10.5.9 REQUIREMENTS FOR NOTICE OF DISCONTINUANCE:

A. The carrier shall notify the group contract holder of the date the group contract will discontinue and that, unless otherwise provided in the group contract, the carrier shall not be liable for claims for losses incurred after the date of discontinuance.

B. The carrier shall also be responsible for notifying all persons covered by the group contract of the discontinuance within ten working days of notice to the group contract holder in whatever manner the carrier customarily uses to provide such notice. The notice shall:

(1) indicate the effective date of the discontinuance;

(2) advise, in any instance in which the plan involves employee contributions, that if the group contract holder continues to collect contributions for the coverage after the date of discontinuance, the group contract holder may be held solely liable for the benefits with respect to the period for which the contributions have been collected;

(3) state that, unless otherwise provided in the group contract, the carrier shall not be liable for claims for losses incurred after the date of discontinuance; and

(4) encourage covered persons to refer to their certificates in order to determine what rights, if any, are available to them upon the discontinuance.

[11/1/98; Recompiled 11/30/01]

13.10.5.10 EXTENSION OF BENEFITS: Every group contract must include a provision for reasonable extension of benefits in the event of total disability on the date of discontinuance of the group contract, as required by this section.

A. In the case of a group life plan which contains a disability benefit extension of any type (e.g., premium waiver extension, extended death benefit in event of total disability, or payment of income for a specified period during total disability), discontinuance of the group contract shall not operate to terminate the extension.

B. In the case of a disability income contract providing benefits for loss of time from work, or specific indemnity during hospital confinement on an accrued liability basis, discontinuance of the group contract during a disability or confinement shall have no effect on benefits payable for that disability or confinement.

C. In the case of hospital or medical expense coverage and HMO plans other than dental and maternity expense, a reasonable extension of benefits or accrued liability provision is required. The provision will be considered reasonable if it provides an extension of at least twelve months under major medical and comprehensive medical type coverage and HMO plans, and under other types of hospital or medical expense coverage provides either an extension of at least ninety days or an accrued liability for expenses incurred during a period of disability or during a period of at least ninety days starting with a specific event which occurred while coverage was in force (e.g., an accident).

D. Any applicable extension of benefits or accrued liability shall be described in the group contract as well as in group insurance certificates. The benefits payable during any period of extension or accrued liability may be subject to the group contract's regular benefit limits (e.g., benefits ceasing at exhaustion of a benefit period or of maximum benefits or benefit restrictions for services provided by unaffiliated providers of an HMO) but in no event shall benefits be reduced solely because of the discontinuance of the group contract except as otherwise permitted by this rule.

[11/1/98; Recompiled 11/30/01]

13.10.5.11 LIABILITY OF PRIOR CARRIER WHEN GROUP CONTRACT REPLACED:

A. The prior carrier remains liable only to the extent of its accrued liabilities and extensions of benefits. The position of the prior carrier shall be the same whether the group contract holder or other entity secures replacement coverage from a new carrier, the same carrier, self-insures, or foregoes the provision of coverage.

B. The prior carrier, if an HMO, may limit the extension of benefits for a totally disabling illness, injury, or condition to services provided by or through its participating providers, unless services are rendered on an emergency basis.

[11/1/98; Recompiled 11/30/01]

13.10.5.12 LIABILITY OF SUCCEEDING CARRIER WHEN GROUPCONTRACT REPLACED:

A. Each person who is eligible for coverage in accordance with the succeeding carrier's plan of benefits shall be covered by that carrier's plan of benefits.

B. Each person not covered under the succeeding carrier's plan of benefits in accordance with 13 NMAC 10.5.12.1 [now Subsection A of 13.10.5.12 NMAC] must nevertheless be covered by the succeeding carrier in accordance with the following standards if the individual was validly covered (including by extension of benefits) under the prior plan on the date of discontinuance and if the individual is a member of the class of individuals eligible for coverage under the succeeding carrier's plan. Any reference in this rule to an individual who was or was not totally disabled is a reference to the individual's status immediately prior to the date the succeeding carrier's coverage becomes effective.

(1) The minimum level of benefits to be provided by the succeeding carrier:

(a) when the succeeding carrier is not an HMO, shall be the applicable level of benefits of the prior carrier's plan reduced by any benefits payable by the prior plan;

(b) when the succeeding carrier is an HMO, shall be the HMO's own level of benefits, reduced by benefits provided or payable by the prior plan.

(2) Benefits must be provided by the succeeding carrier until at least the earliest of the following dates:

(a) the date the individual becomes eligible under the succeeding carrier's plan according to 13 NMAC 10.5.12.1 [now Subsection A of 13.10.5.12 NMAC];

(b) the date the individual's benefits would terminate in accordance with the succeeding carrier's plan provisions applicable to individual termination of coverage (e.g., at termination of employment or ceasing to be an eligible dependent); or

(c) in the case of an individual who was totally disabled, and in the case of a type of coverage for which 13 NMAC 10.5.10 [now 13.10.5.10 NMAC] requires an extension of accrued liability, the end of any period of extension or accrued liability which is required of the prior carrier by 13 NMAC 10.5.10 [now 13.10.5.10 NMAC] or, if the prior carrier's group contract is not subject to 13 NMAC 10.5.10 [now 13.10.5.10 NMAC], would have been required of that carrier had its group contract been subject to 13 NMAC 10.5.10 [now 13.10.5.10 NMAC].

C. The conversion privilege shall be available to those individuals whose benefits cease, if the individual has not become eligible under the succeeding carrier's plan as described in 13 NMAC 10.5.12.1 [now Subsection A of 13.10.5.12 NMAC].

D. The succeeding carrier, in applying any deductibles, co-insurance, co-payments, or waiting periods in its plan, shall give credit for the satisfaction or partial satisfaction of the same or similar provisions under a prior plan providing similar benefits. In the case of deductible provisions, the credit shall apply for the same or overlapping benefit periods and shall be given for expenses actually incurred and applied against the deductible provision of the prior carrier's plan during the 90 days preceding the effective date of the succeeding carrier's plan but only to the extent these expenses are recognized under the terms of the succeeding carrier's plan and are subject to a similar deductible provision.

E. In any situation where a determination of the prior carrier's benefit is required by the succeeding carrier, at the succeeding carrier's request the prior carrier shall furnish a statement of the benefits available or pertinent information, sufficient to permit verification of the benefit determination or the determination itself by the succeeding carrier. For the purposes of 13 NMAC 10.5.11, 10.5.12, and 10.5.13 [now 13.10.5.11 NMAC, 13.10.5.12 NMAC and 13.10.5.13 NMAC], benefits of the prior plan will be determined in accordance with all of the definitions, conditions, and covered expense provisions of the prior plan rather than those of the succeeding plan. The benefit determination will be made as if coverage had not been replaced by the succeeding carrier.

[11/1/98; Recompiled 11/30/01]

13.10.5.13 LIABILITY WHEN THE SUCCEEDING CARRIER IS AN HMO:

A. 13 NMAC 10.5.12.2.1 and 10.5.12.4 [now Paragraph (1) of Subsection B of 13.10.5.12 NMAC and Subsection D of 13.10.5.12 NMAC] do not apply to federally qualified HMOs as long as they are not permitted to require actively at work, hospital non-confinement rules, medical evidence of insurability, or pre-existing condition limitations.

B. In situations where services for a totally disabled person are provided by the succeeding HMO, the succeeding HMO may bill the prior carrier for the reasonable cash value of services provided when the prior carrier has an obligation under its required extension of benefits. The prior carrier shall make direct payment to the succeeding HMO for the cost of the services provided.

[11/1/98; Recompiled 11/30/01]

HISTORY OF 13.10.5 NMAC:

Pre-NMAC History: The material in this rule was originally filed with the State Records Center as:
ID 67-1, Sections 11-3-1 through 11-3-7, New Mexico Official Administrative Rules and Regulations Code, on December 1, 1967.

History of Repealed Material:
13 NMAC 10.5, Group Coverage Discontinuance and Replacement, was repealed effective 10/31/98 and re-promulgated as 13 NMAC 10.5, Group Coverage Discontinuance and Replacement, effective 11/1/98.