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**LETTER NO. 9-K**

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### **ADDITIONAL GUIDANCE TO IMPLEMENT AB 2244**

The Department of Managed Health Care (DMHC), in consultation with the California Department of Insurance (CDI), has developed the following guidance pursuant to AB 2244 (Feuer – Stats. 2010, chap. 656). Pursuant to Health and Safety Code section 1399.835, this guidance is binding and enforceable until the DMHC and the CDI have jointly adopted regulations in accordance with the Administrative Procedures Act. The DMHC may provide additional guidance as necessary to ensure consistent and appropriate implementation of AB 2244. This guidance may be revised in the event of new federal regulations or federal guidance, or as otherwise necessary.

#### **1. Surcharge**

Health and Safety Code section 1399.829(b)(2) allows health plans to impose a 20-percent surcharge, for up to 12 months, if the child to be covered has not maintained continuous coverage during the 90 days prior to application.

The 20-percent surcharge allowed under Health and Safety Code section 1399.829(b)(2) must be based on the “highest allowable rate” for a child similarly situated to the enrolled child to whom the surcharge was charged – that is, a child of the same age, who lives in the same geographic region, and who has the same family composition and the same health plan product as the child to whom the surcharge is applied.

If, during the 12-month surcharge period, a child’s premium is re-rated during an open enrollment period, the health plan must also adjust the surcharge to 20 percent of the new rate for the remainder of the surcharge period.

## 2. Consumer Notice Requirements

Prior to December 31, 2013, the notice required in Health and Safety Code section 1399.829(c) must be provided to each subscriber at the time of sale, at the time of issuance, and at the time of yearly renewal of the health plan contract.

This notice must be prominently displayed in bold-face (minimum 12-point) type, and must include the health plan's contact information.

## 3. Health Plan Reporting Requirements

Under Health and Safety Code section 1399.834(c), health plans that do not write new plan contracts for children on or after January 1, 2011, are barred from selling any new contracts in the individual market for five years.

A health plan must provide the DMHC with written notice of its decision to stop selling new health plan contracts to children. This notice must be filed as an amendment to its application for licensure, in accordance with Health and Safety Code section 1352(a), via the DMHC's e-Filing system.

Health plans must also provide notice to the DMHC, as appropriate, pursuant to all applicable Health and Safety Code sections, including, but not limited to, sections 1352, 1365, and 1367.15, pertaining to plan information, renewability requirements, and closed blocks of business.

## 4. Late Enrollee Eligibility

AB 2244 allows a child (or a "responsible party" for the child) who experiences a "qualifying event" to apply for coverage as a "late enrollee." For the purposes of Health and Safety Code section 1399.825(d)(1), a child who exhausts Consolidated Omnibus Budget Reconciliation Act (COBRA) or California Continuation Benefits Replacement Act (Cal-COBRA) continuation coverage is considered a late enrollee, and may apply for coverage with the premium rate protections applicable to late enrollees, within 63 days of the date of the exhaustion of COBRA or Cal-COBRA coverage.

If you have questions concerning the guidance issued in this letter, please contact the Office of Legal Services at (916) 322-6727.

**Edward G. Heidig, Interim Director**

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