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BULLETIN 86-4

TO: ALL COMPANIES WHICH COORDINATE BENEFITS  
FROM: Earl R. Pomeroy, Commissioner of Insurance  
DATE: August 6, 1986  
SUBJECT: COB Guidelines/Birthday Rule

Effective July 1, 1985, North Dakota amended its Administrative Code relative to coordination of benefits.

Section 45-08-01-01, subsection 3d(3)(a), of the North Dakota Administrative Code incorporates the birthday rule into the COB guidelines. Effective July 1, 1985, the birthday rule imposed the following order of benefit determination for dependent children of parents who are not divorced or separated:

Except for cases of a person for whom claim is made as a dependent child whose parents are separated or divorced, the benefits of a plan which covers the person on whose expenses claim is based as a dependent of a person whose date of birth, excluding year of birth, occurs earlier in a calendar year, must be determined before the benefits of a plan which covers such person as a dependent of a person whose date of birth, excluding year of birth, occurs later in a calendar year. If either plan does not have the provisions of this subparagraph regarding dependents, which results either in each plan determining its benefits before the other or in each plan determining its benefits after the other, the provisions of this subparagraph do not apply, and the rule set forth in the plan which does not have the provisions of this subparagraph determine the order of benefits.

The North Dakota Insurance Department has been informed that companies exercising benefit coordination have not consistently recognized the birthday rule subsequent to its promulgation. It is the purpose of this bulletin to advise of the existence and applicability of this administrative rule.

According to section 45-08-01-02(7) of the Administrative Code, all policies and contract forms subject to the COB guidelines which were issued before July 1, 1985, must have been brought into compliance with the birthday rule by the later of:

- a. The next anniversary date or renewal date of the group policy or contract; or
- b. The expiration of any applicable collectively bargained contract pursuant to which they were written.