



January 9, 2008

John W. Oxendine
Commissioner of Insurance
Two Martin Luther King, Jr. Drive
West Tower, Suite 704
Atlanta, Georgia 30334

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
LESBIAN GAY BISEXUAL
TRANSGENDER &
AIDS PROJECT

Re: Application by Jon Lawson to the GA Assignment System

Dear Commissioner Oxendine:

PLEASE RESPOND TO:
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OFFICERS AND DIRECTORS
NADINE STROSSEN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RICHARD ZACKS
TREASURER

We represent Jon Lawson, a Georgia resident who recently applied for individual health insurance coverage through the Georgia State Assignment System on December 4, 2007, and whose application was denied by your office. We are writing to ask that you reconsider the denial of coverage to Mr. Lawson and immediately enroll him in the Assignment System.

Despite having met the eligibility criteria for participation in the Assignment System, Mr. Lawson received a letter from Claudia Walls of your office on December 7, 2007 informing him that he could not be assigned to any insurance carrier. (A copy of that letter is attached hereto as Exhibit A.) Ms. Walls based her denial on the fact that Mr. Lawson's previous health insurance coverage had been provided as a dependent of his (former) domestic partner. According to Ms. Walls, because Georgia family and insurance law does not recognize the relationship of domestic partnership, and Georgia does not require employers to offer domestic partnership health insurance coverage, Mr. Lawson is ineligible to participate in the Assignment System.

Nothing in the regulations governing the Assignment System, however, exclude individuals who had prior health insurance coverage as domestic partners of employees. Instead, the regulations define "qualifying eligible individual" as including any Georgia domiciliary who meets certain eligibility criteria, as Mr. Lawson does, who is "[a]n otherwise eligible dependent upon reaching limiting age or otherwise losing dependent status under the group health plan or continuation thereof, or under

Commissioner John W. Oxendine
Re: Application by Jon Lawson to the GA Assignment System
January 9, 2008
Page 2

coverage issued to another qualifying eligible individual in the assignment system.” Rules of Comptroller General, Office of Comm’r of Ins., Ch. 120-2-81-.03(1)(f)(7)(d) (emphasis added).¹ Under the terms of Mr. Lawson’s prior group health coverage through the Avis Budget Health Plan, he was an eligible dependent as a domestic partner of Avis employee Steve Klugerman, Mr. Lawson’s former partner. (A copy of the Avis Budget Group Health Plan definition of “dependent” is attached hereto as Exhibit B.) Upon termination of their domestic partner relationship, Mr. Lawson lost dependent status under the group health plan. Accordingly, Mr. Lawson satisfies the eligibility criteria under the regulations governing the Assignment System.

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Moreover, to the extent there were any confusion about the applicable regulations, we also note that the statutes creating the Assignment System define “eligible individual” as having “the same meaning as specified in Sections 2701 and 2741 of the federal Public Health Service Act, 42 U.S.C.A. Sections 300gg and 300gg-41 except that a person shall not be an eligible individual under this chapter if such person is eligible for or has declined any continuation or conversion coverage or has terminated any such coverage prior to its exhaustion.” O.C.G.A. § 33-29A-2 (2007). The relevant section of 42 U.S.C.A. § 300gg-41, in turn, defines “eligible individual” as anyone with eighteen months of aggregate creditable coverage, who is not eligible for coverage under a group health plan, Medicaid, or comparable state health plan, and does not have other health insurance coverage, whose coverage was not terminated for nonpayment of premiums or fraud, and who has exhausted any COBRA continuation coverage available. 42 U.S.C. § 300gg-41(b). These criteria in no way condition eligibility for benefits on having had any particular kind of relationship to an insured employee participant in the group health plan. Because Mr. Lawson plainly meets every one of these criteria, there is absolutely no basis to deny him the right to participate in the state Assignment System simply because he had prior coverage under his partner’s employee health plan.

The purpose of the Georgia State Assignment System is to allow those individuals who had at least eighteen months of prior health insurance coverage to retain insurance coverage without pre-existing condition exclusions. The Georgia system is designed to fill a critical gap to ensure

¹ The regulations define “eligible dependent” as “a dependent of a qualifying eligible individual, including a spouse, covered under the qualifying eligible individual’s most recent group health plan, . . . who meets the requirements of subparagraphs (f)(1) through (6) below.” *Id.* at 120-2-81.03(1)(c).

Commissioner John W. Oxendine
Re: Application by Jon Lawson to the GA Assignment System
January 9, 2008
Page 3

that people who are unable to obtain new employment with group health insurance coverage within two months of losing prior coverage are able to purchase individual insurance. Without these safeguards, people like Jon Lawson would go without insurance coverage or might be forced to rely on the state benefits system, taxing scarce Georgia resources.


In light of the language of the statutes and applicable regulations, and the policy behind this system, there is no basis to exclude Mr. Lawson from purchasing insurance through the Assignment System. All we can conclude from Ms. Walls' letter is that Mr. Lawson's application was denied simply because your office does not approve of his former relationship. As this is not a valid ground for denial of participation, we ask that you immediately approve Mr. Lawson's application and enroll him in the system effective December 31, 2007, the date on which his prior insurance coverage was terminated. See Rules of Comptroller General, Office of Comm'r of Ins., Ch. 120-2-81-10. Because Mr. Lawson is now without health insurance coverage, please notify us that Mr. Lawson's application has been approved by January 16, 2008 to avoid further action on this matter.

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Sincerely,



Rose Saxe
Staff Attorney
ACLU Foundation
Lesbian Gay Bisexual
Transgender Project

 (by permission
RAS)
Azadeh Shahshahani
Interim Legal Director
ACLU Foundation of
Georgia
(Licensed in North
Carolina, not yet admitted
to practice in Georgia)

Encls.

cc: Jon Lawson