



# STATE OF CONNECTICUT

## INSURANCE DEPARTMENT

BULLETIN HC-122  
AUGUST 10, 2018

TO: ALL INSURANCE COMPANIES, FRATERNAL BENEFIT SOCIETIES, HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS AND HEALTH CARE CENTERS THAT DELIVER OR ISSUE ASSOCIATION HEALTH INSURANCE POLICIES IN CONNECTICUT

SUBJECT: DEFINITION OF "EMPLOYER" UNDER SECTION 3(5) OF ERISA- ASSOCIATION HEALTH PLANS

On June 21, 2018, the U.S. Department of Labor issued final regulations regarding association health plans. Pursuant to these regulations, a group or association of employers may act as a single "employer" sponsor of an Association Health Plan under the Employee Retirement Income Security Act of 1974 (ERISA).<sup>1</sup> While the federal government indicates that these associations may form, and provides circumstances under which they may be created, the federal government leaves to the states the authority to regulate association health plans. This bulletin is issued to clarify the content of the federal rule in conjunction with Connecticut law.

### **Fully Insured Association Health Plans:**

Based on the following statutory requirements, any small employer insured under a fully insured association health plan in Connecticut shall continue to be rated as a small employer.

In Connecticut, any fully insured association health plan business must comply with the small group rating requirements found in Connecticut law at C.G.S. § 38a-564 through C.G.S. § 38a-567.

Pursuant to C.G.S. § 38a-564(4)(A), "Small employer" means (i) prior to January 1, 2016, an employer that employed an average of at least one but not more than fifty employees on business days during the preceding calendar year and employs at least one employee on the first day of the group health insurance plan year, and (ii) on and after January 1, 2016, an employer that employed an average of at least one but not more than one hundred employees on business days during the preceding calendar year and employs at least one employee on the first day of the group health insurance plan year, except the commissioner may postpone said January 1, 2016, date to be consistent with any such postponement made by the Secretary of the United States Department of Health and Human Services under the Patient Protection and Affordable Care Act, P.L. 111-148, as amended from time to time. "Small employer" does not include a sole proprietorship that employs only the sole proprietor or the spouse of such sole proprietor.

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<sup>1</sup> Definition of "Employer" under Section 3(5) of ERISA - Association Health Plans, 29 CFR 2510 (2018).

On October 9, 2015, the Connecticut Insurance Department issued bulletin HC-106, which postponed the change from 100 to 50 employees in C.G.S. § 38a-564(4)(A) slated to take effect January 1, 2016 would be postponed indefinitely. After issuance of HC-106, the small group definition in Connecticut remained 1-50 employees.

C.G.S. § 38a-564(4)(C) provides: All persons treated as a single employer under Section 414 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, shall be considered a single employer for purposes of this subdivision.

C.G.S. § 38a-566(a) provides in relevant part: Any individual or group health insurance plan or any insurance arrangement shall be subject to the provisions of sections 38a-552, 38a-564, 38a-567 and 38a-569, if it provides health insurance or is an insurance arrangement covering one or more employees of a small employer...

Pursuant to C.G.S. § 38a-567 (2)(C)(iii), Premium rates for employees and dependents for nongrandfathered plans shall be calculated for each covered individual and premium rates for the small employer group shall be calculated by totaling the premiums attributable to each covered individual.

#### **Self-Funded Association Health Plans:**

On July 25, 1990, The Connecticut Insurance Department issued Bulletin HC-43 regarding self-funded multiple employer welfare arrangements (MEWAs). In that bulletin, the Department indicated that self-insured MEWAs and Multiple Employer Trusts (METs) do the business of insurance, and therefore they must be licensed as insurance carriers. Through this bulletin, the Department takes this opportunity to reaffirm its longstanding commitment to regulating unlicensed entities for the protection of consumers. Any self-insured or self-funded MEWA or MET doing an insurance business without authority or license to do so shall be considered an illegal operation.

#### **Questions**

Please contact the Insurance Department Life and Health Division at [cid.lh@ct.gov](mailto:cid.lh@ct.gov) with any questions.



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