



STATE OF CONNECTICUT

INSURANCE DEPARTMENT

BULLETIN HC-123
AUGUST 27, 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

This bulletin supersedes and replaces bulletin HC-122 issued on August 10, 2018. As a result of further inquiries of the Department following issuance of HC-122, the Department has reissued that bulletin under this number with additional information regarding out of state plans, and state mandates. On June 21, 2018, the U.S. Department of Labor issued final regulations regarding association health plans (83 Fed. Reg. 28912). Pursuant to these regulations, a group or association of employers may act as a single "employer" sponsor of an Association Health Plan (AHP) under the Employee Retirement Income Security Act of 1974 (ERISA).¹ 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 still 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. Sole proprietors are not considered small employers per Connecticut law, and therefore sole proprietors and/or their spouses are excluded from the small employer rating requirements and must purchase plans in the individual market. *Any individual or small group health insurance plans in Connecticut must provide essential health benefits, state mandates, and any other benefit requirements under Connecticut law.*

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.

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."

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

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.”

Out of State Fully Insured Association Health Plans:

Plans established outside of Connecticut may sell products to Connecticut small employers or sole proprietors, but they must file rates and forms for prior approval with the Department.

As previously established, small groups participating in fully insured AHP's must continue to be rated as small groups. The AHP's must follow all requirements for small group health insurance plans. As such, all small employer policy rates and forms must be filed with the Commissioner for prior approval. These plans must abide by all filing requirements for group plans, and must include all applicable group mandates found in Connecticut law.

C.G.S. § 38a-513 (a)(1) provides in relevant part: “No group health insurance policy, as defined by the commissioner, or certificate shall be delivered or issued for delivery in this state unless a copy of the form for such policy or certificate has been submitted to and approved by the commissioner under the regulations adopted pursuant to this section...”

C.G.S. § 38a-513 (a) (2) provides: “No group health insurance policy or certificate for a small employer, as defined in section 38a-564, shall be delivered or issued for delivery in this state unless the premium rates have been submitted to and approved by the commissioner. Premium rate filings shall include an actuarial memorandum that includes, but is not limited to, pricing assumptions and claims experience, and premium rates and loss ratios from the inception of the policy. As used in this subdivision, “loss ratio” means the ratio of incurred claims to earned premiums by the number of years of policy duration for all combined durations.”

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 Bulletin HC-43, 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 with any questions.



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