STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2314 By: Eddins of the House

and

Snyder of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to insurance; amending Section 2, Chapter 329, O.S.L. 1992, as amended by Section 2, Chapter 211, O.S.L. 1994, and amending Section 13, Chapter 211, O.S.L. 1994 (36 O.S. Supp. 1997, Section 6512 and 6527), which relate to the Small Employer Health Insurance Reform Act; modifying certain definition; prohibiting the sale of stop-loss or excess-risk insurance below a certain amount; providing for applicability of limit; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 2, Chapter 329, O.S.L. 1992, as amended by Section 2, Chapter 211, O.S.L. 1994 (36 O.S. Supp. 1997, Section 6512), is amended to read as follows:

Section 6512. As used in the Small Employer Health Insurance Reform Act:

1. "Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individual acceptable to the Insurance Commissioner that a small employer carrier is in compliance with the provisions of Section 6515 of this title, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans;

2. "Affiliate" or "affiliated" means any entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person;

3. "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or which could have been charged under a rating system for that class of business, by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage;

4. "Basic health benefit plan" means a lower cost health benefit plan developed pursuant to Section ~~10~~ 6524 of this ~~act~~ title;

5. "Board" means the board of directors of the program established pursuant to Section ~~8~~ 6522 of this ~~act~~ title;

6. "Carrier" means any entity which provides health insurance in this state. For the purposes of the Small Employer Health Insurance Reform Act, carrier includes a licensed insurance company, not-for-profit hospital service or medical indemnity corporation, a fraternal benefit society, a health maintenance organization, a multiple employer welfare arrangement or any other entity providing a plan of health insurance or health benefits subject to state insurance regulation;

7. "Case characteristics" means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer, provided that claim experience, health status and duration of coverage shall not be case characteristics for the purposes of the Small Employer Health Insurance Reform Act. A small employer carrier shall not use case characteristics, other than age, gender, industry, geographic area, family composition and group size, without prior approval of the Insurance Commissioner;

8. "Class of business" means all or a separate grouping of small employers established pursuant to Section 6514 of the Small Employer Health Insurance Reform Act;

9. "Commissioner" means the Insurance Commissioner;

10. "Committee" means the Health Benefit Plan Committee created pursuant to Section ~~10~~ 6524 of this ~~act~~ title;

11. "Control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact in the manner provided in Section 1654 of this title. The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

12. "Department" means the Insurance Department;

13. "Dependent" means a spouse, an unmarried child under the age of eighteen (18), an unmarried child who is a full-time student under the age of twenty-three (23) and who is financially dependent upon the parent, and an unmarried child of any age who is medically certified as disabled and dependent upon the parent;

14. "Eligible employee" means an employee who works on a full-time basis and has a normal work week of twenty-four (24) or more hours. The term includes a sole proprietor, a partner of a partnership, and associates of a limited liability company, if the sole proprietor, partner or associate is included as an employee under a health benefit plan of a small employer, but does not include an employee who works on a part-time, temporary or substitute basis. The term also includes leased employees working for a small employer at least twenty-four (24) hours per week; provided, the leased and nonleased employees shall be aggregated for purposes of determining the minimum criteria to meet the normal enrollment standards of the carrier;

15. "Established geographic service area" means a geographic area, as approved by the Commissioner and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage;

16. a. "Health benefit plan" means any hospital or medical policy or certificate; contract of insurance provided by a not-for-profit hospital service or medical indemnity plan; or prepaid health plan or health maintenance organization subscriber contract.

b. Health benefit plan does not include accident-only, credit, dental, vision, Medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, any plan certified

by the Oklahoma Basic Health Benefits Board, or automobile medical payment insurance.

c. "Health benefit plan" shall not include policies or certificates of specified disease, hospital confinement indemnity or limited benefit health insurance, provided that the carrier offering such policies or certificates complies with the following:

(1) the carrier files on or before March 1 of each year a certification with the Commissioner that contains the statement and information described in division (2) of this subparagraph,

(2) the certification required in division (1) of this subparagraph shall contain the following:

(a) a statement from the carrier certifying that policies or certificates described in this subparagraph are being offered and marketed as supplemental health insurance and not as a substitute for hospital or medical expense insurance or major medical expense insurance, and

(b) a summary description of each policy or certificate described in this subparagraph, including the average annual premium rates (or range of premium rates in cases where premiums vary by age, gender or other factors) charged for such policies and certificates in this state, and

(3) in the case of a policy or certificate that is described in this subparagraph and that is offered for the first time in this state on or after ~~the effective date of this act~~ July 1, 1994, the carrier files with the Commissioner the

information and statement required in division (2) of this subparagraph at least thirty (30) days prior to the date such a policy or certificate is issued or delivered in this state;

17. "Index rate" means, for each class of business as to a rating period for small employers with similar case characteristics, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate;

18. "Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period during which the individual is entitled to enroll under the terms of the health benefit plan, provided that the initial enrollment period is a period of at least thirty-one (31) days. However, an eligible employee or dependent shall not be considered a late enrollee if:

a. the individual meets each of the following:

(1) the individual was covered under qualifying previous coverage at the time of the initial enrollment,

(2) the individual lost coverage under qualifying previous coverage as a result of termination of employment or eligibility, the involuntary termination of the qualifying previous coverage, death of a spouse or divorce, and

(3) the individual requests enrollment within thirty (30) days after termination of the qualifying previous coverage,

b. the individual is employed by an employer which offers multiple health benefit plans and the individual elects a different plan during an open enrollment period, or

c. a court has ordered coverage be provided for a spouse or minor or dependent child under a covered employee's health benefit plan and request for enrollment is made within thirty (30) days after issuance of the court order;

19. "New business premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or offered, or which could have been charged or offered, by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage;

20. "Plan of operation" means the plan of operation of the program established pursuant to Section ~~8~~ 6522 of this ~~act~~ title;

21. "Premium" means all monies paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan;

22. "Program" means the Oklahoma Small Employer Health Reinsurance Program created pursuant to Section ~~8~~ 6522 of this ~~act~~ title;

23. "Qualifying previous coverage" and "qualifying existing coverage" mean benefits or coverage provided under:

a. Medicare or medicaid,

b. an employer-based health insurance or health benefit arrangement that provides benefits similar to or exceeding benefits provided under the basic health benefit plan, or

c. an individual health insurance policy, including coverage issued by a health maintenance organization, fraternal benefit society and those entities set forth in Section 2501 et seq. of Title 63 of the Oklahoma Statutes, that provides benefits similar to or

exceeding the benefits provided under the basic health benefit plan, provided that such policy has been in effect for a period of at least one (1) year;

24. "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect;

25. "Reinsuring carrier" means a small employer carrier participating in the reinsurance program pursuant to Section ~~8~~ 6522 of this ~~act~~ title;

26. "Restricted network provision" means any provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier pursuant to Section 2501 et seq. of Title 63 of the Oklahoma Statutes to provide health care services to covered individuals;

27. "Risk-assuming carrier" means a small employer carrier whose application is approved by the Commissioner pursuant to Section ~~7~~ 6521 of this ~~act~~ title;

28. "Small employer" means any person, firm, corporation, partnership, limited liability company or association that is actively engaged in business that, on at least fifty percent (50%) of its working days during the preceding calendar quarter, employed no more than fifty (50) eligible employees, the majority of whom were employed within this state. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of state income taxation, shall be considered one employer;

29. "Small employer carrier" means a carrier that offers health benefit plans covering eligible employees of one or more small employers in this state; and

30. "Standard health benefit plan" means a health benefit plan developed pursuant to Section ~~10~~ 6524 of this ~~act~~ title.

SECTION 2. AMENDATORY Section 13, Chapter 211, O.S.L. 1994 (36 O.S. Supp. 1997, Section 6527), is amended to read as follows:

Section 6527. A. Each small employer carrier shall actively market health benefit plan coverage, including the basic and standard health benefit plans, to eligible small employers in this state. If a small employer carrier denies coverage to a small employer on the basis of the health status or claims experience of the small employer or its employees or dependents, the small employer carrier shall offer the small employer the opportunity to purchase a basic health benefit plan and a standard health benefit plan.

B. 1. Except as provided in paragraph 2 of this subsection, no small employer carrier or agent shall, directly or indirectly, engage in the following activities:

a. encouraging or directing small employers to refrain from filing an application for coverage with the small employer carrier because of the health status, claims experience, industry, occupation or geographic location of the small employer, or

b. encouraging or directing small employers to seek coverage from another carrier because of the health status, claims experience, industry, occupation or geographic location of the small employer.

2. The provisions of paragraph 1 of this subsection shall not apply with respect to information provided by a small employer carrier or agent to a small employer regarding the established geographic service area or a restricted network provision of a small employer carrier.

C. 1. Except as provided in paragraph 2 of this subsection, no small employer carrier shall, directly or indirectly, enter into any contract, agreement or arrangement with an agent that provides for

or results in the compensation paid to an agent for the sale of a health benefit plan to be varied because of the health status, claims experience, industry, occupation or geographic location of the small employer.

2. Paragraph 1 of this subsection shall not apply with respect to a compensation arrangement that provides compensation to an agent on the basis of percentage of premium, provided that the percentage shall not vary because of the health status, claims experience, industry, occupation or geographic area of the small employer.

D. A small employer carrier shall provide reasonable compensation, as provided under the plan of operation of the program, to an agent, if any, for the sale of a basic or standard health benefit plan.

E. No small employer carrier may terminate, fail to renew or limit its contract or agreement of representation with an agent for any reason related to the health status, claims experience, occupation or geographic location of the small employers placed by the agent with the small employer carrier.

F. No small employer carrier or agent may induce or otherwise encourage a small employer to separate or otherwise exclude an employee from health coverage or benefits provided in connection with the employee's employment.

G. No small employer carrier shall sell, issue or cause to be issued to a small employer any policy of stop-loss or excess-risk insurance of any kind where the specific individual stop-loss amount is less than Fifteen Thousand Dollars ($15,000.00) or the aggregate stop-loss amount or aggregate attachment point is not less than one hundred twenty percent (120%) of expected claims. This subsection shall apply only to policies written after the effective date of this act. Current policies with stop-loss amounts shall be grandfathered at renewal and continued until the specific stop-loss amount reaches Fifteen Thousand Dollars ($15,000.00) or the

aggregate stop-loss amount reaches one hundred twenty percent (120%) or until termination of the policy.

H. Denial by a small employer carrier of an application for coverage from a small employer shall be in writing and shall state the reason or reasons for the denial.

~~H.~~ I. The Insurance Commissioner may promulgate rules setting forth additional standards to provide for the fair marketing and broad availability of health benefit plans to small employers in this state.

~~I.~~ J. 1. A violation of this section by a small employer carrier or an agent shall be an unfair trade practice under Section 1204 et seq. of Title 36 of the Oklahoma Statutes.

2. If a small employer carrier enters into a contract, agreement or other arrangement with a third-party administrator to provide administrative, marketing or other services related to the offering of health benefit plans to small employers in this state, the third-party administrator shall be subject to this section as if it were a small employer carrier.

SECTION 3. This act shall become effective July 1, 1998.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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