



South Carolina Department of Insurance

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To: All Insurers with Accident and Health Insurance Authority

From: Ernst N. Csiszar
Director 

Subject: Interpretative Bulletin
Group Health Insurance Plans Sold Via Non-employers

I. PURPOSE

A number of questions of construction and interpretation have recently been raised regarding the underwriting and billing of non-employer based association group health insurance plans. It is the purpose of this Bulletin to resolve these questions and to provide guidance to the industry, agents and the public. The following guidance replaces and supersedes previously issued bulletins to the extent they are in conflict.

The South Carolina Department of Insurance (the Department) may periodically issue similar bulletins in question-and-answer format. Questions regarding the contents of this bulletin should be addressed to: June DuBard, Manager, Life, Accident and Health Division, or Tina Amaker, Senior Health Compliance Analyst, at telephone number (803) 737-6230, or at email address: blindler@doi.state.sc.us.

II. QUESTIONS AND ANSWERS

QUESTION (1): Under what circumstances may an insurer list-bill a small employer without triggering small employer reform statutes?

ANSWER (1): List bill is the practice of collecting either individual or association-based group health insurance premiums through authorized payroll deductions from two or more employees' paychecks. The collected premium is then transmitted to the insurer in one lump sum. The

employer neither contributes toward the premium required for the health insurance nor takes any federal or tax deduction.

List bill does not trigger South Carolina's small employer insurance laws because the insurance plans are not offered or issued to small employers. The insurance is offered and issued to individuals who merely have a common employer that is willing to facilitate payment of required premiums by its employees. So long as all of the following conditions are met, a plan will not be treated as small employer health insurance:

1. The employer does not pay any portion of the premium from its own funds or assets;
2. The employer does not reimburse the employees for any portion of the premiums; and
3. Neither the employer nor the employees treat the insurance as part of a plan or program under section 106, 125, or 162 of the Internal Revenue Code.

QUESTION (2): What circumstances are applicable when exclusionary riders are offered to a proposed insured that is applying for group health insurance?

ANSWER (2): South Carolina statutes describe the preexisting condition limitations that must be included in-group health insurance policies. These statutes do not, however, prohibit a non-employer based group health insurance insurer from offering coverage that is subject to one or more exclusionary riders and that are applicable to the uninsurable conditions of persons who fail to provide satisfactory evidence of individual insurability. A non-employer based association group policy or certificate does not violate South Carolina law so long as the exclusionary rider is attached to and is part of the underlying contract and specifies the sickness or physical condition by name or specific description and for how long the exclusionary rider shall remain in effect.

Exclusionary riders may not be offered or used in connection with employer-based group health insurance coverage (S.C. Code Ann. § 38-71-850).

QUESTION (3): If a family applies for non-employer based association group health insurance coverage, is an insurer required to underwrite the whole family and accept or reject the family as one unit?

ANSWER (3): When Article 3 of Chapter 71 is read in conjunction with Article 5 of Chapter 71, it is clear that group health insurance with no employer involvement, that is offered to individuals with dependents, is not underwritten on an accept-or-reject basis with respect to the family unit.

The Department previously indicated via Bulletin Number 9-91 that individual insurability could be evaluated only on groups of ten or less. Recent amendments to state and federal law have made this limitation obsolete. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) defined “group” insurance as employer-sponsored health insurance. Therefore such underwriting limitations are inappropriate where group eligibility is not based upon employment.

Furthermore, the Department concludes that there is no meaningful distinction between a non-employer based group of ten and larger non-employer based groups. Likewise, there is no compelling reason to prevent individual members of a family from applying for and being issued separate non-employer group coverage based on their individual health status. South Carolina has established the South Carolina Health Insurance Pool to provide subsidized major medical coverage to individuals, who because of their health are unable to obtain private health insurance.

Therefore, non-employer based association group insurers are not required to reject an entire family for coverage if one or more members do not provide satisfactory evidence of insurability.