

1                   **EMPLOYER ASSOCIATION HEALTH PLAN AMENDMENTS**

2   2013 GENERAL SESSION

3   STATE OF UTAH

4                           **Chief Sponsor: Peter C. Knudson**

5                           House Sponsor: \_\_\_\_\_

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7 **LONG TITLE**

8 **General Description:**

9                   This bill amends Chapter 30, Individual, Small Employer, and Group Health Insurance  
10 Act, of the Insurance Code.

11 **Highlighted Provisions:**

12                   This bill:

- 13                   ▶ defines a bona fide employer association; and
- 14                   ▶ exempts a bona fide employer association from the requirements of Title 31A,  
15 Chapter 30, Individual, Small Employer, and Group Health Insurance Act.

16 **Money Appropriated in this Bill:**

17                   None

18 **Other Special Clauses:**

19                   None

20 **Utah Code Sections Affected:**

21 AMENDS:

22                   **31A-30-103**, as last amended by Laws of Utah 2012, Chapter 253

23                   **31A-30-104**, as last amended by Laws of Utah 2011, Chapter 400

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25 *Be it enacted by the Legislature of the state of Utah:*

26                   Section 1. Section **31A-30-103** is amended to read:

27                   **31A-30-103. Definitions.**



28 As used in this chapter:

29 (1) "Actuarial certification" means a written statement by a member of the American  
30 Academy of Actuaries or other individual approved by the commissioner that a covered carrier  
31 is in compliance with Sections 31A-30-106 and 31A-30-106.1, based upon the examination of  
32 the covered carrier, including review of the appropriate records and of the actuarial  
33 assumptions and methods used by the covered carrier in establishing premium rates for  
34 applicable health benefit plans.

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

38 (3) "Base premium rate" means, for each class of business as to a rating period, the  
39 lowest premium rate charged or that could have been charged under a rating system for that  
40 class of business by the covered carrier to covered insureds with similar case characteristics for  
41 health benefit plans with the same or similar coverage.

42 (4) "Bona fide employer association" means an association of employers:

43 (a) that meets the requirements of Subsection 31A-22-702(2)(b);

44 (b) whose membership in the association is conditioned on employment status and  
45 includes employees of participating employers;

46 (c) in which the employers of the association, either directly or indirectly, exercise  
47 control over the plan; and

48 (d) that is organized:

49 (i) based on a commonality of interest tied to the employers and employees that  
50 participate in the plan by some common economic or representation interest or genuine  
51 organizational relationship unrelated to the provision of benefits; and

52 (ii) to act in the best interests of its employers to provide benefits for the employer's  
53 employees, and other matters relating to employment.

54 [~~4~~] (5) "Carrier" means any person or entity that provides health insurance in this  
55 state including:

56 (a) an insurance company;

57 (b) a prepaid hospital or medical care plan;

58 (c) a health maintenance organization;

59 (d) a multiple employer welfare arrangement; and

60 (e) any other person or entity providing a health insurance plan under this title.

61 ~~[(5)]~~ (6) (a) Except as provided in Subsection ~~[(5)]~~ (6)(b), "case characteristics" means  
62 demographic or other objective characteristics of a covered insured that are considered by the  
63 carrier in determining premium rates for the covered insured.

64 (b) "Case characteristics" do not include:

65 (i) duration of coverage since the policy was issued;

66 (ii) claim experience; and

67 (iii) health status.

68 ~~[(6)]~~ (7) "Class of business" means all or a separate grouping of covered insureds that  
69 is permitted by the commissioner in accordance with Section 31A-30-105.

70 ~~[(7)]~~ (8) "Conversion policy" means a policy providing coverage under the conversion  
71 provisions required in Chapter 22, Part 7, Group Accident and Health Insurance.

72 ~~[(8)]~~ (9) "Covered carrier" means any individual carrier or small employer carrier  
73 subject to this chapter.

74 ~~[(9)]~~ (10) "Covered individual" means any individual who is covered under a health  
75 benefit plan subject to this chapter.

76 ~~[(10)]~~ (11) "Covered insureds" means small employers and individuals who are issued  
77 a health benefit plan that is subject to this chapter.

78 ~~[(11)]~~ (12) "Dependent" means an individual to the extent that the individual is defined  
79 to be a dependent by:

80 (a) the health benefit plan covering the covered individual; and

81 (b) Chapter 22, Part 6, Accident and Health Insurance.

82 ~~[(12)]~~ (13) "Established geographic service area" means a geographical area approved  
83 by the commissioner within which the carrier is authorized to provide coverage.

84 ~~[(13)]~~ (14) "Index rate" means, for each class of business as to a rating period for  
85 covered insureds with similar case characteristics, the arithmetic average of the applicable base  
86 premium rate and the corresponding highest premium rate.

87 ~~[(14)]~~ (15) "Individual carrier" means a carrier that provides coverage on an individual  
88 basis through a health benefit plan regardless of whether:

89 (a) coverage is offered through:

90 (i) an association;

91 (ii) a trust;

92 (iii) a discretionary group; or

93 (iv) other similar groups; or

94 (b) the policy or contract is situated out-of-state.

95 [~~15~~] (16) "Individual conversion policy" means a conversion policy issued to:

96 (a) an individual; or

97 (b) an individual with a family.

98 [~~16~~] (17) "Individual coverage count" means the number of natural persons covered  
99 under a carrier's health benefit products that are individual policies.

100 [~~17~~] (18) "Individual enrollment cap" means the percentage set by the commissioner  
101 in accordance with Section 31A-30-110.

102 [~~18~~] (19) "New business premium rate" means, for each class of business as to a  
103 rating period, the lowest premium rate charged or offered, or that could have been charged or  
104 offered, by the carrier to covered insureds with similar case characteristics for newly issued  
105 health benefit plans with the same or similar coverage.

106 [~~19~~] (20) "Premium" means money paid by covered insureds and covered individuals  
107 as a condition of receiving coverage from a covered carrier, including any fees or other  
108 contributions associated with the health benefit plan.

109 [~~20~~] (21) (a) "Rating period" means the calendar period for which premium rates  
110 established by a covered carrier are assumed to be in effect, as determined by the carrier.

111 (b) A covered carrier may not have:

112 (i) more than one rating period in any calendar month; and

113 (ii) no more than 12 rating periods in any calendar year.

114 [~~21~~] (22) "Resident" means an individual who has resided in this state for at least 12  
115 consecutive months immediately preceding the date of application.

116 [~~22~~] (23) "Short-term limited duration insurance" means a health benefit product that:

117 (a) is not renewable; and

118 (b) has an expiration date specified in the contract that is less than 364 days after the  
119 date the plan became effective.

120 [~~23~~] (24) "Small employer carrier" means a carrier that provides health benefit plans

121 covering eligible employees of one or more small employers in this state, regardless of  
122 whether:

123 (a) coverage is offered through:

124 (i) an association;

125 (ii) a trust;

126 (iii) a discretionary group; or

127 (iv) other similar grouping; or

128 (b) the policy or contract is situated out-of-state.

129 [~~24~~] (25) "Uninsurable" means an individual who:

130 (a) is eligible for the Comprehensive Health Insurance Pool coverage under the  
131 underwriting criteria established in Subsection 31A-29-111(5); or

132 (b) (i) is issued a certificate for coverage under Subsection 31A-30-108(3); and

133 (ii) has a condition of health that does not meet consistently applied underwriting  
134 criteria as established by the commissioner in accordance with Subsections 31A-30-106(1)(g)  
135 and (h) for which coverage the applicant is applying.

136 [~~25~~] (26) "Uninsurable percentage" for a given calendar year equals UC/CI where, for  
137 purposes of this formula:

138 (a) "CI" means the carrier's individual coverage count as of December 31 of the  
139 preceding year; and

140 (b) "UC" means the number of uninsurable individuals who were issued an individual  
141 policy on or after July 1, 1997.

142 Section 2. Section **31A-30-104** is amended to read:

143 **31A-30-104. Applicability and scope.**

144 (1) This chapter applies to any:

145 (a) health benefit plan that provides coverage to:

146 (i) individuals;

147 (ii) small employers, except as provided in Subsection (3); or

148 (iii) both Subsections (1)(a)(i) and (ii); or

149 (b) individual conversion policy for purposes of Sections 31A-30-106.5 and  
150 31A-30-107.5.

151 (2) This chapter applies to a health benefit plan that provides coverage to small

152 employers or individuals regardless of:

153 (a) whether the contract is issued to:

154 (i) an association, except as provided in Subsection (3);

155 (ii) a trust;

156 (iii) a discretionary group; or

157 (iv) other similar grouping; or

158 (b) the situs of delivery of the policy or contract.

159 (3) This chapter does not apply to:

160 (a) short-term limited duration health insurance; [~~or~~]

161 (b) federally funded or partially funded programs[~~;~~]; or

162 (c) a bona fide employer association.

163 (4) (a) Except as provided in Subsection (4)(b), for the purposes of this chapter:

164 (i) carriers that are affiliated companies or that are eligible to file a consolidated tax  
165 return shall be treated as one carrier; and

166 (ii) any restrictions or limitations imposed by this chapter shall apply as if all health  
167 benefit plans delivered or issued for delivery to covered insureds in this state by the affiliated  
168 carriers were issued by one carrier.

169 (b) Upon a finding of the commissioner, an affiliated carrier that is a health  
170 maintenance organization having a certificate of authority under this title may be considered to  
171 be a separate carrier for the purposes of this chapter.

172 (c) Unless otherwise authorized by the commissioner or by Chapter 42, Defined  
173 Contribution Risk Adjuster Act, a covered carrier may not enter into one or more ceding  
174 arrangements with respect to health benefit plans delivered or issued for delivery to covered  
175 insureds in this state if the ceding arrangements would result in less than 50% of the insurance  
176 obligation or risk for the health benefit plans being retained by the ceding carrier.

177 (d) Section 31A-22-1201 applies if a covered carrier cedes or assumes all of the  
178 insurance obligation or risk with respect to one or more health benefit plans delivered or issued  
179 for delivery to covered insureds in this state.

180 (5) (a) A Taft Hartley trust created in accordance with Section 302(c)(5) of the Federal  
181 Labor Management Relations Act, or a carrier with the written authorization of such a trust,  
182 may make a written request to the commissioner for a waiver from the application of any of the

183 provisions of Subsection 31A-30-106(1) with respect to a health benefit plan provided to the  
184 trust.

185 (b) The commissioner may grant a trust or carrier described in Subsection (5)(a) a  
186 waiver if the commissioner finds that application with respect to the trust would:

187 (i) have a substantial adverse effect on the participants and beneficiaries of the trust;  
188 and

189 (ii) require significant modifications to one or more collective bargaining arrangements  
190 under which the trust is established or maintained.

191 (c) A waiver granted under this Subsection (5) may not apply to an individual if the  
192 person participates in a Taft Hartley trust as an associate member of any employee  
193 organization.

194 (6) Sections 31A-30-106, 31A-30-106.5, 31A-30-106.7, 31A-30-107, 31A-30-108, and  
195 31A-30-111 apply to:

196 (a) any insurer engaging in the business of insurance related to the risk of a small  
197 employer for medical, surgical, hospital, or ancillary health care expenses of the small  
198 employer's employees provided as an employee benefit; and

199 (b) any contract of an insurer, other than a workers' compensation policy, related to the  
200 risk of a small employer for medical, surgical, hospital, or ancillary health care expenses of the  
201 small employer's employees provided as an employee benefit.

202 (7) The commissioner may make rules requiring that the marketing practices be  
203 consistent with this chapter for:

204 (a) a small employer carrier;

205 (b) a small employer carrier's agent;

206 (c) an insurance producer; and

207 (d) an insurance consultant.

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**Legislative Review Note**  
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**Office of Legislative Research and General Counsel**