

SB0213S01 compared with SB0213

~~deleted text~~ shows text that was in SB0213 but was deleted in SB0213S01.

inserted text shows text that was not in SB0213 but was inserted into SB0213S01.

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Senator Peter C. Knudson proposes the following substitute bill:

EMPLOYER ASSOCIATION HEALTH PLAN AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Peter C. Knudson

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

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Utah Code Sections Affected:

AMENDS:

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

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

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

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

31A-30-103. Definitions.

As used in this chapter:

(1) "Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individual approved by the commissioner that a covered carrier is in compliance with Sections 31A-30-106 and 31A-30-106.1, based upon the examination of the covered carrier, including review of the appropriate records and of the actuarial assumptions and methods used by the covered 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 that could have been charged under a rating system for that class of business by the covered carrier to covered insureds with similar case characteristics for health benefit plans with the same or similar coverage.

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

(~~f~~a*i*) that meets the requirements of Subsection ~~{31A-22-702}~~31A-22-701(2)(b);

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

(~~c~~)*ii*) in which the employers of the association, either directly or indirectly, exercise control over the plan;(~~f~~and~~f~~)

(~~f~~d)*iii*) that is organized:

(~~f~~i)A) based on a commonality of interest ~~{tied to}~~between the employers and their employees that participate in the plan by some common economic or representation interest or

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genuine organizational relationship unrelated to the provision of benefits; and

(~~iii~~)B) to act in the best interests of its employers to provide benefits for the employer's employees and their spouses and dependents, and other ~~matters~~ benefits relating to employment~~;~~ and

(iv) whose association sponsored health plan complies with 45 C.F.R. 146.121.

(b) The commissioner shall consider the following with regard to determining whether an association of employers is a bona fide employer association under Subsection (4)(a):

(i) how association members are solicited;

(ii) who participates in the association;

(iii) the process by which the association was formed;

(iv) the purposes for which the association was formed, and what, if any, were the pre-existing relationships of its members;

(v) the powers, rights and privileges of employer members; and

(vi) who actually controls and directs the activities and operations of the benefit programs.

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

- (a) an insurance company;
- (b) a prepaid hospital or medical care plan;
- (c) a health maintenance organization;
- (d) a multiple employer welfare arrangement; and
- (e) any other person or entity providing a health insurance plan under this title.

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

- (b) "Case characteristics" do not include:
- (i) duration of coverage since the policy was issued;
 - (ii) claim experience; and
 - (iii) health status.

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

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

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

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

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

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

- (a) the health benefit plan covering the covered individual; and
- (b) Chapter 22, Part 6, Accident and Health Insurance.

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

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

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

- (a) coverage is offered through:
 - (i) an association;
 - (ii) a trust;
 - (iii) a discretionary group; or
 - (iv) other similar groups; or
- (b) the policy or contract is situated out-of-state.

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

- (a) an individual; or
- (b) an individual with a family.

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

~~[(17)]~~ (18) "Individual enrollment cap" means the percentage set by the commissioner

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in accordance with Section 31A-30-110.

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

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

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

(b) A covered carrier may not have:

- (i) more than one rating period in any calendar month; and
- (ii) no more than 12 rating periods in any calendar year.

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

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

- (a) is not renewable; and
- (b) has an expiration date specified in the contract that is less than 364 days after the date the plan became effective.

~~[(23)]~~ (24) "Small employer carrier" means a carrier that provides health benefit plans covering eligible employees of one or more small employers in this state, regardless of whether:

- (a) coverage is offered through:
 - (i) an association;
 - (ii) a trust;
 - (iii) a discretionary group; or
 - (iv) other similar grouping; or
- (b) the policy or contract is situated out-of-state.

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

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

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(b) (i) is issued a certificate for coverage under Subsection 31A-30-108(3); and
(ii) has a condition of health that does not meet consistently applied underwriting criteria as established by the commissioner in accordance with Subsections 31A-30-106(1)(g) and (h) for which coverage the applicant is applying.

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

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

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

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

31A-30-104. Applicability and scope.

(1) This chapter applies to any:

(a) health benefit plan that provides coverage to:

(i) individuals;

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

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

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

(2) This chapter applies to a health benefit plan that provides coverage to small employers or individuals regardless of:

(a) whether the contract is issued to:

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

(ii) a trust;

(iii) a discretionary group; or

(iv) other similar grouping; or

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

(3) This chapter does not apply to:

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

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

(c) a bona fide employer association.

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

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

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

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

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

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

(5) (a) A Taft Hartley trust created in accordance with Section 302(c)(5) of the Federal Labor Management Relations Act, or a carrier with the written authorization of such a trust, may make a written request to the commissioner for a waiver from the application of any of the provisions of Subsection 31A-30-106(1) with respect to a health benefit plan provided to the trust.

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

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

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

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

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

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

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

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

- (a) a small employer carrier;
- (b) a small employer carrier's agent;
- (c) an insurance producer; and
- (d) an insurance consultant.

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Legislative Review Note

~~as of 2-18-13 5:41 PM~~

~~Office of Legislative Research and General Counsel~~