

AN ACT

ENTITLED, An Act to revise small employer health plan requirements by clarifying the definition of a small employer, exceptions to issuing a policy, rating provisions and minimum participation requirements, and by deleting obsolete references relating to basic and standard plans.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 58-18B-1 be amended to read as follows:

58-18B-1. Terms used in this chapter mean:

- (1) "Actuarial certification," a written statement by a member of the American Academy of Actuaries or other individual approved by the director that a small employer carrier is in compliance with the provisions of this chapter, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the carrier in establishing premium rates for applicable health benefit plans;
- (2) "Base premium rate," the lowest premium rate charged or which could have been charged for each class of business for a rating period 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;
- (3) "Carrier," any person who provides health insurance in this state. In this chapter, carrier includes a licensed insurance company, a prepaid hospital or medical service plan, a health maintenance organization, a multiple employer welfare arrangement, or any person providing a plan of health insurance subject to state insurance regulation;
- (4) "Case characteristics," demographic or other relevant characteristics of a small employer, as determined by a small employer carrier, which are considered by the carrier for the determination of premium rates. Claim experience, health status, and duration of coverage since issue are not case characteristics in this chapter;

- (5) "Class of business," all or a distinct grouping of small employers as shown on the records of the small employer carrier;
- (a) A distinct grouping may only be established by a small employer carrier on the basis that the applicable health benefit plans:
- (i) Are marketed and sold through individuals and organizations which are not participating in the marketing or sale of other distinct groupings of small employers for such small employer carrier;
 - (ii) Have been acquired from another small employer carrier as a distinct grouping of plans;
 - (iii) Are provided through an association with membership of not less than twenty-five small employers which has been formed for purposes other than obtaining insurance; or
 - (iv) Are in a class of business that meets the requirements for exception to the restrictions related to premium rates provided in subsection 58-18B-3(1)(a);
- (b) A small employer carrier may establish no more than two additional groupings under each of the subparagraphs in subsection (a) on the basis of underwriting criteria which are expected to produce substantial variation in the health care costs;
- (c) The director may approve the establishment of additional distinct groupings upon application to, and a finding by, the director that such action would enhance the efficiency and fairness of the small employer insurance marketplace;
- (6) "Director," the director of the Division of Insurance;
- (7) "Division," the Division of Insurance of the Department of Commerce and Regulation;
- (8) "Index rate," the arithmetic average of the applicable base premium rate and the corresponding highest premium rate for each class of business for small employers with

similar case characteristics;

- (9) "New business premium rate," the premium rate charged or offered by a small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage for each class of business for a rating period;
- (10) "Rating period," the calendar period for which premium rates established by a small employer carrier are assumed to be in effect, as determined by the small employer carrier;
- (11) "Small employer," any person, firm, corporation, partnership, or association actively engaged in business which on an average of its working days during the preceding year, employed no more than fifty and no less than two employees and who employs at least two employees on the first day of the plan year. In determining the number of employees, companies which are affiliated companies or which are eligible to file a combined tax return for purposes of state taxation are considered to be one employer;
- (12) "Small employer carrier," any carrier which offers health benefit plans covering the employees of a small employer;
- (13) "Affiliate" or "affiliated," any person who, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, any other specified person;
- (14) "Dependent," except as otherwise required by this title, any spouse, any unmarried child under the age of nineteen years, any unmarried child who is a full-time student under the age of twenty-three and who is financially dependent upon the parent, and any unmarried child of any age who is medically certified as disabled and dependent upon the parent;
- (15) "Eligible employee," any employee who works on a permanent basis and has a normal work week of thirty or more hours. The term includes any sole proprietor, any partner, and any independent contractor, if the sole proprietor, partner, or independent contractor is

included as an employee under a health benefit plan of a small employer, but does not include any employee who works less than thirty hours or on a temporary or substitute basis;

- (16) "Employee," has the meaning given such term under Section 3(6) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) as amended to January 1, 2001;
- (17) "Health benefit plan," any hospital or medical policy or certificate, hospital or medical service plan, or health maintenance organization subscriber contract. The term does not include specified disease, hospital indemnity, fixed indemnity, accident-only, credit, dental, vision, prescription drug, medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, or automobile medical payment insurance;
- (18) "Restricted network provision," 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 to provide health care services to covered individuals.

Section 2. That § 58-18B-17 be amended to read as follows:

58-18B-17. The premium rates for an individual covered in a small employer plan may not exceed the premium rate for any other individual covered under the same small employer carrier because of age alone by a factor of 3:1. A small employer carrier may not require any individual to pay any premium or contribution that is greater than that for a similarly situated individual enrolled in the plan. Nothing in this section prohibits a group health plan, and a health insurance issuer offering group health insurance coverage, from establishing premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion or

disease prevention.

Section 3. That § 58-18B-20 be amended to read as follows:

58-18B-20. A small employer carrier shall issue health benefit plans to any small employer that applies for a plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with this chapter. If, on the first day of the plan year, a small employer plan has fewer than two participants who are current employees, the carrier is not required to issue a policy to the small employer. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a particular class of business if:

- (1) The criteria are not related to the health status or claim experience of the small employer;
- (2) The criteria are applied consistently to all small employers applying for coverage in the class of business; and
- (3) The small employer carrier provides for the acceptance of all eligible small employers into one or more classes of business.

The provisions of this section do not apply to a class of business into which the small employer carrier is no longer enrolling new small businesses. If the director determines that all carriers in the small employer market have met the two percent threshold, the threshold shall, upon order of the director, be expanded an additional two percent. The threshold shall be expanded in additional two percent increments if all small employer carriers meet the previous threshold. No small employer carrier is required to issue coverage to any small employer if the small employers who are at high-risk constitute two percent of that carrier's earned premium on an annual basis from small employer health benefit plans. The director may promulgate rules pursuant to chapter 1-26 to determine which policies may be used to determine the two percent threshold, the procedures involved, and the applicable time frames. In making that determination, the director shall develop a method designed to limit the

number of high risk groups to which any one carrier may be required to issue coverage.

Section 4. That § 58-18B-25 be amended to read as follows:

58-18B-25. In applying minimum participation requirements with respect to a small employer, a small employer carrier may consider employees or dependents who have creditable coverage in determining whether the applicable percentage of participation is met. If any employee or dependent with other creditable coverage is to be considered towards calculating the applicable percentage of participation, the employee or dependent shall be counted as participating in the plan.

Section 5. That § 58-18B-29 be repealed.

Section 6. That § 58-18B-31 be repealed.

Section 7. That § 58-18B-32 be repealed.

Section 8. That § 58-18B-55 be amended to read as follows:

58-18B-55. Any policy or certificate of specified disease, short-term hospital-surgical care of six months or less duration, hospital confinement indemnity, limited benefit health insurance, or other policy or certificate that provide benefits less than that of a major medical plan that is offered to a small employer in this state is exempt from the provisions of this chapter only if the carrier offering the policy or certificate at the time of filing for policy form approval, submits a statement certifying that policies or certificates described in this section are being offered and marketed as supplemental health insurance or as individual health benefit plans of six-month duration or less and not renewable, and not as a substitute for hospital or medical expense insurance or major medical insurance. For policy forms approved prior to July 1, 1998, the carrier shall submit such a statement with the director.

For purposes of this section a major medical policy is any policy which provides benefits which are actuarially equivalent to or exceed the basic plan as was approved and adopted by rule by the director pursuant to chapter 1-26. Policies which are not certified pursuant to this section and which

are not major medical policies may not be used as a substitute for major medical policies and must provide for adequate disclosure of the scope of the benefits contained therein.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1042

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1042
File No. _____
Chapter No. _____

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Received at this Executive Office this ____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State