6.6.5004 APPLICABILITY, SCOPE, AND TRANSITION

(1) Except as provided elsewhere in this rule, this subchapter applies to any health benefit plan, whether provided on a group or individual basis, which:

(a) Meets one or more of the conditions set forth in 33-22-1804 , MCA; and

(b) Provides coverage to one or more employees of a small employer located in this state, without regard to whether the policy or certificate was issued in this state.

(2) A carrier that provides individual health insurance policies to one or more of the employees-of a small employer is subject to the act and this subchapter with respect to such policies, if the small employer contributes to the payment or reimbursement of premiums for the policies. The carrier is not considered a small employer carrier if premiums are paid entirely by contributions from employees. A payroll deduction or list-billed premium arrangement is allowable only if premiums are paid entirely by contributions from employees.

(3) The act and this subchapter do not apply to any health benefit plan provided to a small employer or to the employees of a small employer if the plan constitutes both a multiple employer welfare arrangement as defined by section 29 USCS 1002(40) (A) and an employee welfare benefit plan under section 29 USCS 1002(1) . For applicability of the act and this subchapter to health benefit plans provided through associations, see ARM 6.6.5060.

(4) An individual health insurance policy is not subject to the provisions of these rules solely because the policyholder elects a deduction under section 162(1) of the Internal Revenue Code, entitled "special rules for health insurance costs of self-employed individuals."

(5) An employer qualifies as a small employer if it meets the definition of "small employer" in 33-22-1803 , MCA, and employs at least 2 but not more than 50 eligible employees regardless of whether each eligible employee intends to enroll in the employer's health benefit plan. The number of eligible employees includes every employee who meets the hourly requirement set by the employer as defined in 33-22-1803 , MCA, and ARM 6.6.5001(8) . A small employer group must meet a carrier's participation requirement for issuance of a policy.

(6) If the small employer is issued a health benefit plan, the act and this subchapter continue to apply to the health benefit plan in the case that the small employer subsequently employs less than 2 or more than 50 eligible employees until the next renewal date. A carrier providing coverage to such an employer shall notify the employer 60 days prior to the plan renewal date, or, if the carrier becomes aware of such an employer less than 60 days before the plan renewal date, immediately, that the protections provided under the act and this subchapter cease to apply to the employer upon the plan renewal date.

(7) Subject to (9) , if a health benefit plan is issued to an employer that is not a small employer as defined in the act, but subsequently the employer becomes a small employer, the act and this subchapter do not apply to the existing health benefit plan until the next renewal date. The carrier providing a health benefit plan to such an employer must not become a small employer carrier under these rules solely because the carrier continues to provide coverage under the existing health benefit plan to the employer until the renewal date.

(8) A carrier providing coverage to an employer described in (7) shall, within 60 days of becoming aware that the employer has 2 to 50 eligible employees, but not later than the next renewal date, notify the employer of the options and protections available to the employer under the act, including the employer's option to purchase a small employer health benefit plan from any small employer carrier.

(9) A carrier providing coverage to an employer described in (7) may continue to provide coverage to the small employer without becoming a small employer carrier, according to the provisions of 33-22-1811 (1) (c) , MCA, but only if the carrier does not actively market coverage to any small employers. If the carrier does actively market to any small employer, then the carrier is deemed a small employer carrier subject to all the provisions of the act and this subchapter, including guaranteed issue requirements as set forth in ARM 6.6.5079A. Carriers providing continuing coverage under this subsection must comply with (8) .

(10) If a small employer has employees in more than one state, the act and this subchapter apply to any health benefit plans issued to the small employer if:

(a) The majority of eligible employees of such small employer are employed in this state or,

(b) If no state contains a majority of the eligible employees of the small employer, the primary business location of the small employer is in this state.

(c) In determining whether the laws of this state or another state apply to a health benefit plan issued to a small employer described in (7) , the provisions of (7) apply as of the date the health benefit plan was issued to the small employer for the period that the health benefit plan remains in effect.

(d) If a health benefit plan is subject to this subchapter, this subchapter applies to all individuals covered under the health benefit plan, whether they reside in this state or in another state.

(11) A carrier that is not operating as a small employer carrier in this state is not subject to the provisions of this subchapter solely because it issued a health benefit plan in another state to a small employer that subsequently moves to this state, until the plan renewal date. However, such a carrier shall, within 60 days of becoming aware that the employer has moved to this state, notify the employer of the options and protections available to the employer under the act, including the employer's option to purchase a small employer health benefit plan from any small employer carrier authorized to do business in this state.

(12) Carriers offering individual and group health benefit plans in this state are responsible for determining whether the plans are subject to the requirements of the act and this subchapter. Carriers shall elicit the following information from applicants for such plans at the time of application:

(a) Whether any portion of the premium will be paid by or on behalf of a small employer, either directly or through wage adjustments or other means of reimbursement; and

(b) Whether the prospective policyholder, certificate holder, or any proposed insured individual intends to treat the health benefit plan as part of a plan or program for the purposes of sections 106, 125 or 162 of the Internal Revenue Code, and, if so, whether any part of the plan or program is funded by an applicant's small employer.

(13) If a small employer carrier fails to comply with (12) , the small employer carrier shall be deemed to be on notice of any information that could reasonably have been attained if the small employer carrier had complied with that section.

Authorizing statute(s): Sec. 33-1-313 and 33-22-1822, MCA

Implementing statute(s): Sec. 33-22-1802, 33-22-1804, 33-22-1808, 33-22-1811, and 33-22-1812, MCA

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