

CHAPTER 425

INSURANCE

HOUSE BILL 03-1294

BY REPRESENTATIVE(S) Stafford, Williams S., Frangas, Mitchell, Weddig, and Paccione;
also SENATOR(S) McElhany, Andrews, Kester, and Teck.

AN ACT**CONCERNING HEALTH INSURANCE FOR EMPLOYERS WITH FEWER THAN FIFTY-ONE EMPLOYEES.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 10-16-105 (8) (a) (VIII) and (8) (e) and the introductory portion to 10-16-105 (8) (f), Colorado Revised Statutes, are amended, and the said 10-16-105 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

10-16-105. Small group sickness and accident insurance - guaranteed issue - mandated provisions for basic and standard health benefit plans.

(8) (a) (VIII) (A) ~~The commissioner, in consultation with the executive director of the department of health care policy and financing, shall develop a method for risk adjustment that will fairly compensate small employer carriers for the risks assumed when issuing health insurance to small employers as required in subsection (7.3) of this section. In developing such methodology, the executive director shall actively seek input from insurance carriers that would be affected by such a risk adjustment method. By July 1, 1995, the commissioner shall promulgate rules for risk adjustment based on this methodology.~~

~~(B) The requirements of subparagraphs (VI) and (VII) of this paragraph (a) shall only apply to small employer carriers when the regulations developed pursuant to this subparagraph (VIII) are promulgated as rules. If such regulations are not promulgated as rules, the restrictions contained in subparagraphs (II) and (V) of this paragraph (a) shall continue to apply notwithstanding the January 1, 1997, limitation contained in such provisions.~~

(e) The small employer carrier shall not use case characteristics, other than age, geographic area, and family composition, nor shall it use any other rating factors

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~other than actual claims experience on that small employer carrier's health benefit plan, industry, class of business, and plan design without prior approval of the commissioner; except as provided in subparagraph (I) of paragraph (a) of this subsection (8) AND SUBSECTIONS (13) TO (15) OF THIS SECTION.~~

(f) The commissioner may establish rules to implement the provisions of this subsection (8) and to assure that rating practices used by small employer carriers are consistent with the purposes of this subsection (8) AND SUBSECTIONS (13) TO (15) OF THIS SECTION, including rules that:

(13) (a) (I) ON AND AFTER JANUARY 1, 2004, A SMALL EMPLOYER MAY BE SUBJECT TO PREMIUM ADJUSTMENTS FOR HEALTH STATUS UP TO THIRTY-FIVE PERCENT ABOVE THE MODIFIED COMMUNITY RATE FOR A PERIOD NO GREATER THAN TWELVE MONTHS IF THE SMALL EMPLOYER HAS, AT ANY TIME DURING THE PAST TWELVE MONTHS, PURCHASED HEALTH BENEFIT COVERAGE AS A SMALL EMPLOYER THAT IS EITHER SELF-FUNDED OR INSURED THROUGH A HEALTH BENEFIT PLAN THAT IS NOT A SMALL GROUP PLAN; EXCEPT FOR HEALTH BENEFIT PLANS SPONSORED BY AN EMPLOYEE LEASING COMPANY, AS DEFINED IN SECTION 8-70-114 (2) (a) (I), C.R.S., PURSUANT TO SUB-SUBPARAGRAPHS (D) TO (F) OF THIS SUBPARAGRAPH (I). THE PROVISIONS OF THIS SUBPARAGRAPH (I) SHALL NOT APPLY TO:

(A) A SMALL EMPLOYER THAT HAS NOT PREVIOUSLY SPONSORED A HEALTH BENEFIT PLAN FOR ITS EMPLOYEES;

(B) A SELF-EMPLOYED PERSON WHO HAS NOT PREVIOUSLY QUALIFIED AS A BUSINESS GROUP OF ONE;

(C) A SMALL EMPLOYER THAT MEETS THE CRITERIA OF PARAGRAPH (b) OF THIS SUBSECTION (13);

(D) A SMALL EMPLOYER THAT HAD PREVIOUSLY PARTICIPATED IN A HEALTH BENEFIT PLAN THROUGH AN EMPLOYEE LEASING COMPANY, AS DEFINED IN SECTION 8-70-114 (2) (a) (I), C.R.S., IF THE SMALL EMPLOYER'S COVERAGE THROUGH THE EMPLOYEE LEASING COMPANY WAS SUBJECT TO THE SMALL GROUP LAWS;

(E) A SMALL EMPLOYER THAT HAD PREVIOUSLY PARTICIPATED IN A HEALTH BENEFIT PLAN SPONSORED BY AN EMPLOYEE LEASING COMPANY, AS DEFINED IN SECTION 8-70-114 (2) (a) (I), C.R.S., AND THE SMALL EMPLOYER IS NO LONGER A PARTY TO AN EMPLOYEE LEASING COMPANY; OR

(F) A SMALL EMPLOYER THAT IS CURRENTLY USING THE SERVICES OF AN EMPLOYEE LEASING COMPANY, AS DEFINED IN SECTION 8-70-114 (2) (a) (I), C.R.S., THAT DOES NOT OFFER A HEALTH BENEFIT PLAN AS PART OF ITS EMPLOYEE LEASING SERVICES OR BECAUSE OF AN ACTION BY AN INSURER, HAS CEASED OFFERING A HEALTH BENEFIT PLAN TO EMPLOYEES ASSIGNED TO CLIENT LOCATIONS PURSUANT TO AN EMPLOYEE LEASING CONTRACT.

(II) FOR THE PURPOSES OF DETERMINING WHETHER THE SMALL EMPLOYER IS ELIGIBLE FOR THE PREMIUM ADJUSTMENT, THE CARRIER MAY REQUIRE THAT THE SMALL EMPLOYER SUBMIT EITHER OF THE FOLLOWING:

(A) EVIDENCE OF THE MOST RECENT HEALTH BENEFIT COVERAGE; OR

(B) IN THE CIRCUMSTANCES IN WHICH THE SMALL EMPLOYER DOES NOT CURRENTLY SPONSOR A SMALL GROUP PLAN, A SIGNED AFFIDAVIT CONFIRMING THAT THE SMALL EMPLOYER HAS NEVER SPONSORED A GROUP POLICY AT ANY TIME DURING THE PAST TWELVE MONTHS PRIOR TO APPLYING FOR SMALL GROUP COVERAGE, AND ACKNOWLEDGING THAT FAILURE TO REPORT SUCH PREVIOUS GROUP COVERAGE MAY RESULT IN THE APPLICATION OF A PREMIUM ADJUSTMENT FOR HEALTH STATUS OF UP TO THIRTY-FIVE PERCENT ABOVE THE MODIFIED COMMUNITY RATE FOR A SMALL EMPLOYER CARRIER.

(b) A SMALL EMPLOYER WHO HAD PURCHASED HEALTH BENEFIT COVERAGE FROM A SMALL EMPLOYER CARRIER AND WHO DISCONTINUED HEALTH BENEFIT COVERAGE AS A SMALL EMPLOYER PRIOR TO JANUARY 1, 2004, MAY OBTAIN HEALTH BENEFIT COVERAGE FROM A SMALL EMPLOYER CARRIER WITHOUT BEING SUBJECT TO PREMIUM ADJUSTMENTS FOR HEALTH STATUS PRIOR TO JULY 1, 2004.

(c) SMALL EMPLOYER CARRIERS MAY OFFER SMALL GROUP POLICIES THAT INCLUDE A PREMIUM DISCOUNT NOT TO EXCEED TEN PERCENT FOR THOSE INDIVIDUALS THAT HAVE REFRAINED FROM SMOKING FOR MORE THAN TWELVE CONSECUTIVE MONTHS PRIOR TO THE EFFECTIVE DATE OR RENEWAL OF THE SMALL GROUP NONSMOKER POLICY. SUCH NONSMOKER DISCOUNTS SHALL BE FOR THE SUBSEQUENT POLICY YEAR PERIOD. PROOF OF NONSMOKING STATUS MAY BE REQUESTED BY THE CARRIER WHEN THE POLICY IS ISSUED OR RENEWED.

(d) THE PREMIUM ADJUSTMENT FOR HEALTH STATUS ALLOWED PURSUANT TO THIS SUBSECTION (13) SHALL ONLY BE USED FOR THE CALCULATION OF PREMIUM AMOUNTS AND SHALL NOT BE USED BY A SMALL EMPLOYER CARRIER AS A BASIS OF ACCEPTANCE OR REJECTION OF HEALTH BENEFIT COVERAGE FOR A SMALL EMPLOYER. THE PREMIUM ADJUSTMENT FOR HEALTH STATUS SHALL NOT APPLY TO A GROUP OF MORE THAN FIFTY EMPLOYEES THAT SUBSEQUENTLY BECOMES SUBJECT TO SMALL GROUP COVERAGE IF SUCH GROUP HAS HAD NO LAPSE OF COVERAGE GREATER THAN NINETY DAYS.

(14) (a) A SMALL EMPLOYER GROUP WHOSE SMALL GROUP INSURANCE HAS BEEN DISCONTINUED BECAUSE OF NONPAYMENT OF PREMIUMS OR FRAUD MAY BE SUBJECT TO PREMIUM ADJUSTMENTS FOR HEALTH STATUS OF NO MORE THAN THIRTY-FIVE PERCENT ABOVE THE MODIFIED COMMUNITY RATE FOR A SMALL EMPLOYER CARRIER WHEN THE SMALL BUSINESS GROUP REAPPLIES FOR COVERAGE IN THE SMALL GROUP MARKET. A SMALL EMPLOYER CARRIER MAY REQUIRE THE INCREASED PREMIUM TO APPLY TO THE SMALL BUSINESS GROUP FOR A PERIOD NO GREATER THAN TWELVE MONTHS.

(b) THE PREMIUM ADJUSTMENT FOR HEALTH STATUS ALLOWED PURSUANT TO THIS SUBSECTION (14) SHALL ONLY BE USED FOR THE CALCULATION OF PREMIUM AMOUNTS AND SHALL NOT BE USED BY A SMALL EMPLOYER CARRIER AS A BASIS OF ACCEPTANCE OR REJECTION OF HEALTH BENEFIT COVERAGE FOR A BUSINESS GROUP OF ONE.

(15) ON AND AFTER JANUARY 1, 2004, SMALL EMPLOYER GROUPS WHO HAVE NOT PREVIOUSLY SPONSORED HEALTH BENEFIT COVERAGE SHALL NOT BE SUBJECT TO PREMIUM ADJUSTMENTS FOR HEALTH STATUS PURSUANT TO SUBSECTION (13) OF THIS

SECTION.

SECTION 2. Effective date - applicability. (1) This act shall take effect January 1, 2004.

(2) However, if a referendum petition is filed against this act or an item, section, or part of this act during the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, then the act, item, section, or part, shall not take effect unless approved by the people at a biennial regular general election and shall take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.

(3) The provisions of this act shall apply to health insurance policies issued or renewed to small employers on or after the applicable effective date of this act.

Became Law: June 7, 2003