



STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Division of Insurance

Sean Parnell, Governor
Susan K. Bell, Commissioner
Linda S. Hall, Director

BULLETIN B 11-05

**TO: ALL HEALTH INSURERS AND HEALTH INSURANCE PRODUCERS
SELLING HEALTH INSURANCE IN THE STATE OF ALASKA AND OTHER
INTERESTED PARTIES**

RE: INDIVIDUAL HEALTH CARE POLICIES IN THE GROUP MARKET

Effective July 1, 2011, a new statute went into effect that now allows the sale of individual policies in the group employer market under specified conditions. Specifically the new law states:

Sec. 21.54.180. Individual health care insurance policies offered in the group market. (a) Except as provided in (b) of this section, a person may not sell, solicit, or negotiate an individual health care insurance policy to an employer or employee of an employer, and an insurer may not issue an individual health care insurance policy to an employee of an employer.

(b) Notwithstanding the definition of “group market” in AS 21.54.500, a person may sell, solicit, or negotiate an individual health care insurance policy to an employer or employee of an employer, and an insurer may issue an individual health care insurance policy to an employee of an employer, only if

(1) the employee is not an eligible employee as defined in AS 21.56.250; or

(2) the employer does not offer a health benefit plan and has not offered a health benefit plan in the last six months.

(c) An individual health care insurance policy offered under (b) of this section is health care insurance offered in the individual market and subject to the requirements of AS 21.51.

(d) This section does not prohibit an individual from purchasing a health insurance policy in the individual market.

(e) In this section, “individual market” has the meaning given in AS 21.51.500.

Unchanged by this new law is that, if an individual pays premiums for an individual policy with money that is not provided by an employer for the purpose of paying health care expenses including health insurance, then insurers may issue individual policies to those employees. Such individual policies are issued in the individual market not the group market and subject to individual insurance laws not group insurance laws.

The new law addresses issuance of individual policies in the employer group market. The definition of group market in AS 21.54.500(14) remains unchanged and is defined as:

. . . the health care insurance market in which individuals obtain health care insurance coverage on behalf of themselves and their dependents through a health benefit plan maintained by a large or small employer; “group market” includes a health benefit plan for a small employer plan in the group market that includes an arrangement under which

- (A) a portion of the premium or benefits is paid by a small employer;
- (B) a covered individual or dependent is reimbursed, through wage adjustments or otherwise, by or on behalf of a small employer for all or a portion of the premium; or
- (C) the health benefit plan is treated by the employer or any of the eligible employees or dependents as part of a plan or program for the purposes of 26 U.S.C. 106 or 26 U.S.C. 162 (Internal Revenue Code) . . .

Under this definition of group market, if an employer pays any portion of insurance premiums for its employees or dependents, regardless of the mechanism through which the premiums are paid, the employer is creating a group insurance plan subject to the group insurance laws.

The group insurance laws provide important protections for employees and their dependents including a requirement that insurers guarantee issue to eligible employees and their dependents regardless of health condition and a prohibition against insurers discriminating in premiums charged to employees and their dependents based on health status. Comparable requirements do not apply to individual health insurance. In the absence of the Alaska group market definition, the group insurance protections could be circumvented; for example, simply by a plan in which employers pay premiums for individual insurance policies for its employees. The impact of this would be that employees with health conditions, instead of receiving similar group health insurance for a premium that does not vary based on health status, would have only one coverage option, the state high risk pool (ACHIA), because insurers do not issue individual policies to individuals with health conditions. Premiums for coverage purchased through ACHIA are significantly higher than premiums for individual coverage purchased through an insurer. Also, individual coverage is generally less comprehensive than group insurance. For example, individual health insurance policies in Alaska do not provide coverage for maternity.

The new law recognizes that in the cases where employers cannot or choose not to provide group insurance or where employees, such as part-time and seasonal employees, are not eligible for group insurance even if the employer offers a group health insurance plan, an exception to the applicability of the group insurance laws would benefit those Alaskan employers and employees and their dependents. The new law specifically allows insurers to issue individual policies to employees or their dependents if

- (1) their employer does not currently offer and has not offered health insurance for the last six months; or
- (2) the employee is a non-eligible employee (such as a part-time or seasonal employee).

The intent of the six-month waiting period is to discourage employers from dropping their group health insurance plans to the detriment of employees and their dependents, particularly those with health conditions.

EXAMPLES OF HOW THE LAW WORKS

An insurer may issue an individual health insurance policy to an individual who wants to buy an individual health insurance policy using money that was not provided by an employer for the purpose of paying health care expenses, which may include insurance premiums. This is not a change in the insurance laws.

An insurer may issue an individual health insurance policy to an individual who is not an eligible employee, such as a part-time (i.e. works less than 30 hours per week), seasonal, or temporary employee, even if an employer pays a portion of the premium for the policy.

An insurer may issue an individual health insurance policy to an individual who is employed by an employer that has never offered a group health insurance plan or who terminated its group health insurance plan more than six months ago and the individual pays for the individual health insurance policy using employer funds. Examples include paying all or a portion of the premium for an individual health insurance policy with money

- (1) from a health reimbursement account funded by an employer to pay qualified medical expenses (such as premiums for individual health insurance);
- (2) from increased salaries or wages provided by an employer specifically to assist employees in paying for insurance or medical expenses;
- (3) paid directly to the insurer by an employer;
- (4) through a salary reduction or cafeteria plan.

PRODUCER AND INSURER RESPONSIBILITIES

Producers and insurers are responsible for compliance with the new law and should verify that premiums used to purchase individual insurance are not paid with any employer funds unless (1) the employer does not currently offer and has not offered health insurance for the last six months; or (2) the employee is a non-eligible employee (such as a part-time or seasonal employee).

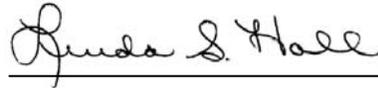
Placing or issuing individual insurance, whether knowingly or unknowingly, when any portion of the premium is paid for with funds specifically provided by the employer for the purchase of insurance or payment of health care expenses is a violation of Alaska insurance laws and may be subject to administrative action by the director.

Insurers should modify their application forms to request information on the source of funds such as

“Are any of the premiums for this policy paid from employer funds specifically for the purchase of insurance or health care expenses such as money from a health reimbursement account or extra wages specifically provided by the employer for the purchase of insurance or health care expenses?” or similar language.

If you have questions regarding this bulletin, please contact the Division of Insurance, P.O. Box 110805, Juneau, AK 99811-0805; (907) 465-2515; or via electronic mail at insurance@alaska.gov

Dated: July 21, 2011

A handwritten signature in cursive script that reads "Linda S. Hall". The signature is written in black ink and is positioned above a solid horizontal line.

Linda S. Hall
Director