



INFORMATIONAL BULLETIN

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Florida Department of Insurance

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Treasurer, Insurance Commissioner and Fire Marshal

All Small Group Carriers

One-Life Group Open Enrollment Practices

The purpose of this bulletin is to remind all small group carriers of the laws governing health insurance for small groups, particularly one-life groups, in light of the upcoming Open Enrollment in August. Section 627.6699(5)(a), Florida Statutes, states:

[E]very small employer carrier issuing new health benefit plans to small employers in this state **must**, as a condition of transacting business in this state, **offer** to eligible small employers a standard health benefit plan and a basic health benefit plan. Such a small employer carrier **shall issue** a standard health benefit plan or a basic health benefit plan to every **eligible small employer** that elects to be covered under such plan, agrees to make the required premium payments under such plan, and to satisfy the other provisions of the plan. (Emphasis added).

Section 627.6699(5)(c), Florida Statutes, states:

Every small employer carrier **must**, as a condition of transacting business in this state... **offer and issue** basic and standard small employer health benefit plans on a **guaranteed-issue basis**, during a 31-day open enrollment period of August 1 through August 31 of each year, to every **eligible small employer**, with fewer than two eligible employees, which small employer is not formed primarily for the purpose of buying health insurance and which elects to be covered under such plan, agrees to make the required premium payments, and satisfies the other provisions of the plan. (Emphasis added).

Section 627.6699(3)(u), Florida Statutes provides that a:

"Self-employed individual" means an individual or sole proprietor who derives his or her income from a trade or business carried on by the individual or sole proprietor which results in taxable income as indicated on IRS Form 1040, schedule C or F, and which generated taxable income in one of the 2 previous years.

Section 627.6699(3)(v), Florida Statutes provides that a:

“Small employer” means, in connection with a health benefit plan with respect to a calendar year and a plan year, any person, sole proprietor, self-employed individual, independent contractor, firm, corporation, partnership, or association that is actively engaged in business, has its principal place of business in this state, employed an average of at least 1 but not more than 50 eligible employees on business days during the preceding calendar year, and employs at least 1 employee on the first day of the plan year. For purposes of this section, a sole proprietor, an independent contractor, or a self-employed individual is considered a small employer only if all of the conditions and criteria established in this section are met.

Small employer carriers may request or consider the following information, records, or documents in determining whether an employer meets the definition of small employer pursuant to Section 627.6699(3)(v), Florida Statutes, if the employer was: required by any applicable law to maintain the information, records or documents; or filed the document with a local, state or federal governmental agency or authority; or maintains the information in the normal course of business; or was issued the information, records, or documents by a local, state or federal agency for authority:

1. IRS form 1040, Schedule C or F
2. IRS 941 (quarterly wage and tax form)
3. IRS 1065 (for partnership income)
4. IRS 1120 (corporate income)
5. IRS 1099 (which may include payments to independent contractors)
6. IRS 2106 (employee business expenses)
7. IRS 990 (for non-profits with annual receipts over \$25,000)
8. Occupational Licenses
9. State Licenses
10. Florida UT 6 (unemployment compensation tax form)
11. Articles of incorporation
12. Partnership agreements
13. Affidavits from the customers or suppliers of the small employer
14. Auditable personal records of receipts, expenditures, invoices
15. Leases and other contracts

Any practice that results in the declination of an application that was received during the open enrollment period from a small employer constitutes a failure to comply with the guaranteed-issue requirements of Section 627.6699(5), Florida Statutes. For example, imposing standards for eligibility that are not required by law such as: a) requiring that the small employer be a domestic entity; b) requiring the group to have prior group coverage; or c) requiring payment of premiums with business checks instead of personal checks.

The Department will be particularly diligent in monitoring each small group carrier’s conduct with respect to the Open Enrollment Period. On-site investigators may be scheduled for this period to ensure compliance with Florida Law. If you have any questions regarding this bulletin, please contact Joe Finnegan, Chief, Bureau of Market Conduct at (850) 413-3155.