

Bulletin 285

SMALL GROUP HEALTH INSURANCE: ELIGIBILITY STANDARDS

Several questions have arisen concerning what eligibility standards insurers and employers may impose for coverage of employees by small group health plans. This bulletin is intended to clarify the requirements of Title 24-A M.R.S.A. §2808-B, subsections 1(C) and 4(A).

Subsection 1(C) defines "eligible employee" as an employee who works 30 hours or more per week. Additionally, at the employer's discretion, part-time employees working 10 or more hours per week and/or retirees may also be included as eligible employees under the employer sponsored small group health insurance plan. Section 2808-B(1)(C) functions to prohibit insurers from excluding from coverage any "eligible employee" the employer wishes to cover. Employers, however, may elect to exclude certain classes of employees from participation in the group plan even if they meet the statute's definition of "eligible employee." As previously stated in Bulletin 245, an employer may elect to make its health plan available only to certain categories of employees. For example, an employer may limit participation in the group plan to employees working 40 or more hours per week. If that employer has employees working fewer than 40 hours per week, those employees would not be eligible for coverage under the employer's group policy regardless of whether or not they meet the statute's definition of "eligible employee."

Section 2808-B(4)(A) authorizes insurers to impose participation requirements for purposes of determining a small group's eligibility for guaranteed issue coverage. Insurers may count all statutorily defined, non-discretionary "eligible employees," (i.e., employees working at least 30 hours per week) for purposes of calculating whether or not a small group meets the insurer's minimum participation requirements. This means that an employer who chooses to exclude certain categories of statutorily defined "eligible employees" from participation in a group plan may, as a result, lose the right to guaranteed issue or guaranteed renewal of coverage.

For example, assume that an employer has 30 employees. Six employees have health insurance coverage independent of the employer-sponsored group plan and may not be counted by the insurer in determining minimum participation requirements. If the insurer requires 75% of eligible employees to participate in the employer-sponsored plan, at least 18 of the remaining 24 employees would need to participate in order for the employer to be eligible for coverage from the insurer. Now assume that 4 of those 24 employees work 32 hours per week, and the employer wishes to cover only the 20 employees working 40 hours per week. The insurer may still require 18 employees to participate in order for the group to be eligible for coverage. Furthermore, the same result would apply even if the employer had only 17 employees working 40 hours per week: the group would not satisfy that insurer's 75% participation requirement and would be ineligible for coverage even if all 17 employees wanted to participate in the plan. Insurers, however, are free to use more liberal participation requirements.

Another question that often arises concerns seasonal employees. Bulletin 230 stated the Bureau's interpretation that "full-time" means employees working more than 26 weeks per year. The weeks worked do not need to be consecutive. Subsequent to the publication of Bulletin 230, the law was amended to permit employers to elect to cover part-time employees working at least 10 hours per week. The Bureau interprets the law to require part-time employees to work more than 26 weeks per year in order to be "eligible employees" under the law. An insurer may decline to cover employees working less than 26 weeks per year under a small group plan.

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