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Assigned to: Economic Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 22, 2000

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Health Insurance - Small Group Market - Eligibility Requirements**

3 FOR the purpose of altering certain criteria for determining when a person is  
4 considered a small employer for purposes of small group market health  
5 insurance; altering certain criteria for determining when an employee is  
6 considered to be an eligible employee; ~~eliminating certain self-employed~~  
7 ~~individuals from being considered small employers~~; altering certain minimum  
8 participation requirements; ~~providing for a certain health benefit plan with a~~  
9 ~~high deductible; authorizing a carrier to impose a preexisting condition~~  
10 ~~provision under certain circumstances; altering certain definitions; requiring~~  
11 ~~the Maryland Health Care Commission to submit a certain report to the~~  
12 ~~Economic Matters Committee and the Finance Committee on or before a certain~~  
13 ~~date; requiring the Maryland Health Care Commission to study the feasibility~~  
14 ~~and desirability of developing a high deductible health benefit plan for small~~  
15 ~~employers; and generally relating to eligibility of small employers and~~  
16 employees under small group market health insurance.

17 BY repealing and reenacting, without amendments,  
18 Article - Insurance  
19 Section 15-1201(e) and (g), 15-1207(a), 15-1208, and 15-1210(a)  
20 Annotated Code of Maryland  
21 (1997 Volume and 1999 Supplement)

22 BY repealing and reenacting, with amendments,  
23 Article - Insurance  
24 Section ~~15-1201(e) and (g), 15-1203, and 15-1206(c), 15-1207(a), 15-1208, and~~

1           ~~15-1210(a)~~  
2       Annotated Code of Maryland  
3       (1997 Volume and 1999 Supplement)

4       SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
5       MARYLAND, That the Laws of Maryland read as follows:

6   **Article - Insurance**

7   15-1201.

8       (e)       (1)       "Eligible employee" means:

9                       (i)       an individual who:

10   1.       is an employee, {sole proprietor, self-employed  
11 individual,} partner of a partnership, or independent contractor who is included as an  
12 employee under a health benefit plan; and

13   2.       works on a full-time basis and has a normal workweek of  
14 at least 30 hours; or

15   (ii)       a sole employee of a nonprofit organization that has been  
16 determined by the Internal Revenue Service to be exempt from taxation under §  
17 501(c)(3), (4), or (6) of the Internal Revenue Code who:

18   1.       has a normal workweek of at least 20 hours; and

19   2.       is not covered under a public or private plan for health  
20 insurance or other health benefit arrangement.

21       (2)       "Eligible employee" does not include an individual who works:

22                       (i)       on a temporary or substitute basis; or

23                       (ii)       except for an individual described in paragraph (1)(ii) of this  
24 subsection, for less than 30 hours in a normal workweek.

25       (g)       "Late enrollee" means{:

26                       (1)}       an eligible employee or dependent who requests enrollment in a  
27 health benefit plan after the initial enrollment period provided under the health  
28 benefit plan{; or

29                       (2)       a self-employed individual described in § 15-1203(c) or (d) of this  
30 subtitle or dependent who requests enrollment in a health benefit plan after an  
31 annual open enrollment period for self-employed individuals established by the  
32 carrier in accordance with regulations adopted by the Commissioner}.

1 15-1203.

2 (a) A small employer under this subtitle is a person that meets the criteria  
3 specified in any subsection of this section.

4 (b) (1) A person is considered a small employer under this subtitle if the  
5 person:

6 (i) is an employer that on at least 50% of its working days during  
7 the preceding calendar [year] QUARTER, employed at least two but not more than 50  
8 eligible employees, the majority of whom are employed in the State; and

9 (ii) is a person actively engaged in business or is the governing body  
10 of:

11 1. a charter home-rule county established under Article  
12 XI-A of the Maryland Constitution;

13 2. a code home-rule county established under Article XI-F of  
14 the Maryland Constitution;

15 3. a commission county established or operating under  
16 Article 25 of the Code; or

17 4. a municipal corporation established or operating under  
18 Article XI-E of the Maryland Constitution.

19 (2) Notwithstanding paragraph (1)(i) of this subsection:

20 (i) a person is considered a small employer under this subtitle if  
21 the employer did not exist during the preceding calendar year but on at least 50% of  
22 the working days during its first year the employer employs at least two but not more  
23 than 50 eligible employees and otherwise satisfies the conditions of paragraph (1)(i) of  
24 this subsection; and

25 (ii) if the federal Employee Retirement Income Security Act  
26 (ERISA) is amended to exclude employee groups under a specific size, this subtitle  
27 shall apply to any employee group size that is excluded from that Act.

28 (3) In determining the group size specified under paragraph (1)(i) of this  
29 subsection:

30 (i) companies that are affiliated companies or that are eligible to  
31 file a consolidated federal income tax return shall be considered one employer; and

32 (ii) an employee may not be counted who is[

33 1. otherwise covered under a public or private health  
34 insurance plan or other health benefit arrangement; or

1 2.] a part-time employee as described in § ~~{15-1210(a)(1)(ii)}~~  
 2 ~~15-1210(A)(2)~~ 15-1210(a)(1)(ii) of this subtitle.

3 (4) A carrier may request documentation to verify that a person meets  
 4 the criteria under this subsection to be considered a small employer under this  
 5 subtitle.

6 (5) Notwithstanding paragraph (1)(i) of this subsection, a person is  
 7 considered to continue to be a small employer under this subtitle if the person met the  
 8 conditions of paragraph (1)(i) of this subsection and purchased a health benefit plan  
 9 in accordance with this subtitle, and subsequently eliminated all but one employee.

10 ~~{(c)}~~ An individual is considered a small employer under this subtitle if the  
 11 individual:

12 (1) ~~lives, works, or~~ WORKS AND resides in the State; and

13 (2) is a self-employed individual organized as a sole proprietorship or in  
 14 any other legally recognized manner that a self-employed individual may organize:

15 (i) a substantial part of whose income derives from a trade or  
 16 business through which the individual has attempted to earn taxable income;

17 (ii) who has filed the appropriate Internal Revenue form for the  
 18 previous taxable year; and

19 (iii) for whom a copy of the appropriate Internal Revenue form or  
 20 forms and schedule has been filed with the carrier.

21 (d) An individual is considered a small employer under this subtitle if the  
 22 individual is a self-employed individual who is engaged in a licensed profession  
 23 through a professional corporation organized in accordance with Title 5, Subtitle 1 of  
 24 the Corporations and Associations Article and who received health benefits through a  
 25 professional association on or before June 30, 1994.}

26 ~~{(e)}~~ ~~{(E)}~~ A person is considered a small employer under this subtitle if the  
 27 person is a nonprofit organization that has been determined by the Internal Revenue  
 28 Service to be exempt from taxation under § 501(c)(3), (4), or (6) of the Internal  
 29 Revenue Code and has at least one eligible employee.

30 [(f) Notwithstanding subsection (b)(3)(ii)1 of this section, in otherwise  
 31 satisfying the requirements of subsection (b)(1) of this section, a person is considered  
 32 a small employer under this subtitle if:

33 (1) all but one of its eligible employees are covered under another public  
 34 or private health benefit plan or other health benefit arrangement; and

35 (2) only one of its eligible employees is not covered under any public or  
 36 private health benefit plan or other health benefit arrangement.]

1 15-1206.

2 (c) (1) Subject to the approval of the Commissioner and as provided under  
3 this subsection and § 15-1209(d) of this subtitle, a carrier may impose reasonable  
4 minimum participation requirements.

5 (2) A carrier may not impose a requirement for minimum participation  
6 by the eligible employees of a small employer that is greater than 75%.

7 (3) In applying a minimum participation requirement to determine  
8 whether the applicable percentage of participation is met, a carrier may not consider  
9 as eligible employees those who have GROUP SPOUSAL coverage under a public or  
10 private plan of health insurance or another EMPLOYER'S health benefit arrangement,  
11 including Medicare, Medicaid, and CHAMPUS, that provides benefits similar to or  
12 exceeding the benefits provided under the Standard Plan.

13 (4) A carrier may not impose a minimum participation requirement for a  
14 small employer group if any member of the group participates in a medical savings  
15 account.

16 15-1207.

17 (a) In accordance with Title 19, Subtitle 1 of the Health - General Article, the  
18 Commission shall adopt regulations that specify:

19 (1) the Comprehensive Standard Health Benefit Plan to apply under this  
20 subtitle; {and}

21 (2) a modified health benefit plan for medical savings accounts that  
22 qualify under the federal Health Insurance Portability and Accountability Act of 1996,  
23 including:

24 (i) a waiver of deductibles as permitted under federal law;

25 (ii) minimum funding standards for medical savings accounts; and

26 (iii) authorization for offering the modified plan only by those  
27 persons who offer the Comprehensive Standard Health Benefit Plan adopted in  
28 accordance with item (1) of this subsection; ~~AND~~

29 ~~(3) A MODIFIED HEALTH BENEFIT PLAN WITH A HIGH DEDUCTIBLE,~~  
30 ~~WHICH IS NOT OFFERED IN COMBINATION WITH A MEDICAL SAVINGS ACCOUNT~~  
31 ~~UNDER ITEM (2) OF THIS SUBSECTION.~~

32 15-1208.

33 (a) (1) ~~{A} EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (E) OF THIS~~  
34 ~~SECTION,~~ A carrier may not limit coverage under a health benefit plan for a  
35 preexisting condition.

1 (2) An exclusion of coverage for preexisting conditions may not be  
2 applied to health care services furnished for pregnancy or newborns.

3 (b) (1) This subsection does not apply to a late enrollee if:

4 (i) the individual requests enrollment within 30 days after  
5 becoming an eligible employee;

6 (ii) a court has ordered coverage to be provided for a spouse or  
7 minor child under a covered employee's health benefit plan; or

8 (iii) a request for enrollment is made within 30 days after the  
9 eligible employee's marriage or the birth or adoption of a child.

10 (2) Notwithstanding subsection (a) of this section, a late enrollee may be  
11 subject to a 12-month preexisting condition provision or a waiting period until the  
12 next open enrollment period not to exceed a 12-month period.

13 (c) A health benefit plan that does not use a preexisting condition provision  
14 may impose on enrollees:

15 (1) a waiting period not to exceed 90 days; or

16 (2) for 1 year, a surcharge not to exceed 1.5 times the community rate  
17 established in accordance with § 15-1205 of this subtitle.

18 (d) For a period not to exceed 6 months after the date an individual becomes  
19 an eligible employee, a health benefit plan may require deductibles and cost-sharing  
20 for benefits for a preexisting condition of the eligible employee in amounts not  
21 exceeding 1.5 times the amount of the standard deductibles and cost-sharing of other  
22 eligible employees if:

23 (1) the employee was not previously covered by a public or private plan  
24 of health insurance or another health benefit arrangement; and

25 (2) the employee was not previously employed by that employer.

26 ~~(E) A CARRIER MAY IMPOSE A PREEXISTING CONDITION PROVISION ON AN~~  
27 ~~ELIGIBLE EMPLOYEE WHO IS A NEW ENROLLEE IF:~~

28 ~~(1) THE SMALL EMPLOYER HAS NO MORE THAN NINE ELIGIBLE~~  
29 ~~EMPLOYEES;~~

30 ~~(2) THE PREEXISTING CONDITION OF THE NEW ENROLLEE HAS EXISTED~~  
31 ~~FOR 6 MONTHS OR LESS; AND~~

32 ~~(3) THE PREEXISTING CONDITION PROVISION IS IMPOSED ON THE NEW~~  
33 ~~ENROLLEE FOR A PERIOD NOT TO EXCEED 12 MONTHS.~~

1 15-1210.

2 (a) ~~{(1)}~~ A carrier that offers coverage to a small employer shall:

3 ~~{(i)}~~ (1) offer coverage to all of its eligible employees and all of  
4 their eligible dependents;

5 ~~{(ii)}~~ (2) at the election of the small employer, offer coverage to all  
6 of its part-time employees who have a normal workweek of at least 17 1/2 but less  
7 than 30 hours per week and have been continuously employed for at least 4  
8 consecutive months; ~~AND~~

9 ~~{(iii)}~~ (3) at the election of the small employer, offer coverage to all  
10 of its employees who are covered under another public or private plan of health  
11 insurance or another health benefit arrangement; and

12 (iv) establish an annual open enrollment period for self-employed  
13 individuals for at least 30 consecutive days in each 6-month period.

14 (2) Notwithstanding any other provision of this section and §§ 15-1209,  
15 15-1211, and 15-1213 of this subtitle, a carrier may deny coverage to a self-employed  
16 individual who applies for a health benefit plan at a time other than the carrier's  
17 annual open enrollment period}.

18 SECTION 2. AND BE IT FURTHER ENACTED, That:

19 (a) On or before January 1, 2001, the Maryland Health Care Commission, in  
20 consultation with the Maryland Insurance Administration, health insurance carriers,  
21 small employers, insurance agents and insurance brokers, shall report, in accordance  
22 with § 2-1246 of the State Government Article, to the House Economic Matters  
23 Committee and the Senate Finance Committee on the effect of group size in the small  
24 group insurance market on the HMO and PPO delivery systems of each prominent  
25 carrier in the small group insurance market.

26 (b) In developing the report, the Maryland Health Care Commission shall  
27 specifically consider the effect of group size (including self-employed groups) in the  
28 small group insurance market on:

29 (1) the extent of group coverage;

30 (2) premium increases;

31 (3) the number of covered lives;

32 (4) the number of policies issued;

33 (5) premiums earned; and

34 (6) claims incurred.

1 (c) For purposes of the Maryland Health Care Commission report, "prominent  
2 insurance carrier" means a carrier that covers at least 5% of the total lives in the  
3 small group health insurance market or 10% of the total lives in any one delivery  
4 system.

5 (d) In addition to the report, the Maryland Health Care Commission shall, as  
6 part of its annual review of the Comprehensive Standard Health Benefit Plan,  
7 examine the feasibility and desirability of developing a high deductible health benefit  
8 plan for small employers.

9 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take  
10 effect June 1, 2000.