

SENATE BILL No. 1039

December 17, 2009, Introduced by Senators BARCIA, ALLEN and CROPSEY and referred to the Committee on Commerce and Tourism.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending section 3701 (MCL 500.3701), as added by 2003 PA 88.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3701. As used in this chapter:

2 (a) "Actuarial certification" means a written statement by a
3 member of the American academy of actuaries or another individual
4 acceptable to the commissioner that a small employer carrier is in
5 compliance with the provisions of section 3705, based upon the
6 person's examination, including a review of the appropriate records
7 and the actuarial assumptions and methods used by the carrier in
8 establishing premiums for applicable health benefit plans.

9 (b) "Affiliation period" means a period of time required by a

1 small employer carrier that must expire before health coverage
2 becomes effective.

3 (c) "Base premium" means the lowest premium charged for a
4 rating period under a rating system by a small employer carrier to
5 small employers for a health benefit plan in a geographic area.

6 (d) "Carrier" means a person that provides health benefits,
7 coverage, or insurance in this state. For the purposes of this
8 chapter, carrier includes a health insurance company authorized to
9 do business in this state, a nonprofit health care corporation, a
10 health maintenance organization, a multiple employer welfare
11 arrangement, or any other person providing a plan of health
12 benefits, coverage, or insurance subject to state insurance
13 regulation.

14 (e) "COBRA" means the consolidated omnibus budget
15 reconciliation act of 1985, Public Law 99-272. ~~7, 100 Stat. 82.~~

16 (f) "Commercial carrier" means a small employer carrier other
17 than a nonprofit health care corporation or health maintenance
18 organization.

19 (g) "Creditable coverage" means, with respect to an
20 individual, health benefits, coverage, or insurance provided under
21 any of the following:

22 (i) A group health plan.

23 (ii) A health benefit plan.

24 (iii) Part A or part B of title XVIII of the social security
25 act, chapter 531, 49 Stat. 620, 42 U.S.C. ~~USC~~ 1395c to ~~1395i~~ and
26 ~~1395i-2 to 1395i-5~~, and 42 U.S.C. ~~USC~~ 1395j to ~~1395t, 1395u to~~
27 ~~1395w, and 1395w-2 to 1395w-4.~~

1 (iv) Title XIX of the social security act, chapter 531, 49
2 Stat. 620, 42 ~~U.S.C.—USC~~ 1396 to ~~1396r-6 and 1396r-8 to~~ 1396v,
3 other than coverage consisting solely of benefits under section
4 1929 of title XIX of the social security act, 42 ~~U.S.C.—USC~~ 1396t.

5 (v) Chapter 55 of title 10 of the United States Code, 10
6 ~~U.S.C.—USC~~ 1071 to 1110. For purposes of chapter 55 of title 10 of
7 the United States Code, 10 ~~U.S.C.—USC~~ 1071 to 1110, "uniformed
8 services" means the armed forces and the commissioned corps of the
9 national oceanic and atmospheric administration and of the public
10 health service.

11 (vi) A medical care program of the Indian health service or of
12 a tribal organization.

13 (vii) A state health benefits risk pool.

14 (viii) A health plan offered under the employees health benefits
15 program, chapter 89 of title 5 of the United States Code, 5 ~~U.S.C.—~~
16 ~~USC~~ 8901 to 8914.

17 (ix) A public health plan, which for purposes of this chapter
18 means a plan established or maintained by a state, county, or other
19 political subdivision of a state that provides health insurance
20 coverage to individuals enrolled in the plan.

21 (x) A health benefit plan under section 5(e) of title I of the
22 peace corps act, Public Law 87-293, 22 ~~U.S.C.—USC~~ 2504.

23 (h) "Eligible employee" means an employee who works on a full-
24 time basis with a normal workweek of 30 or more hours. Eligible
25 employee includes an employee who works on a full-time basis with a
26 normal workweek of 17.5 to 30 hours, if an employer so chooses and
27 if this eligibility criterion is applied uniformly among all of the

1 employer's employees and without regard to health status-related
2 factors.

3 (i) "Geographic area" means an area in this state that
4 includes not less than 1 entire county, established by a carrier
5 pursuant to section 3705 and used for adjusting premiums for a
6 health benefit plan subject to this chapter. In addition, if the
7 geographic area includes 1 entire county and additional counties or
8 portions of counties, the counties or portions of counties must be
9 contiguous with at least 1 other county or portion of another
10 county in that geographic area.

11 (j) "Group health plan" means an employee welfare benefit plan
12 as defined in section 3(1) of subtitle A of title I of the employee
13 retirement income security act of 1974, Public Law 93-406, 29
14 ~~U.S.C.—USC~~ 1002, to the extent that the plan provides medical care,
15 including items and services paid for as medical care to employees
16 or their dependents as defined under the terms of the plan directly
17 or through insurance, reimbursement, or otherwise. As used in this
18 chapter, all of the following apply to the term group health plan:

19 (i) Any plan, fund, or program that would not be, but for
20 section 2721(e) of subpart 4 of part A of title XXVII of the public
21 health service act, chapter 373, 110 Stat. 1967, 42 ~~U.S.C.—USC~~
22 300gg-21, an employee welfare benefit plan and that is established
23 or maintained by a partnership, to the extent that the plan, fund,
24 or program provides medical care, including items and services paid
25 for as medical care, to present or former partners in the
26 partnership, or to their dependents, as defined under the terms of
27 the plan, fund, or program, directly or through insurance,

1 reimbursement or otherwise, shall be treated, subject to
2 subparagraph (ii), as an employee welfare benefit plan that is a
3 group health plan.

4 (ii) The term "employer" also includes the partnership in
5 relation to any partner.

6 (iii) The term "participant" also includes an individual who is,
7 or may become, eligible to receive a benefit under the plan, or the
8 individual's beneficiary who is, or may become, eligible to receive
9 a benefit under the plan. For a group health plan maintained by a
10 partnership, the individual is a partner in relation to the
11 partnership and for a group health plan maintained by a self-
12 employed individual, under which 1 or more employees are
13 participants, the individual is the self-employed individual.

14 (k) "Health benefit plan" or "plan" means an expense-incurred
15 hospital, medical, or surgical policy or certificate, nonprofit
16 health care corporation certificate, or health maintenance
17 organization contract. Health benefit plan does not include
18 accident-only, credit, dental, or disability income insurance;
19 long-term care insurance; coverage issued as a supplement to
20 liability insurance; coverage only for a specified disease or
21 illness; worker's compensation or similar insurance; or automobile
22 medical-payment insurance.

23 (l) "Index rate" means the arithmetic average during a rating
24 period of the base premium and the highest premium charged per
25 employee for each health benefit plan offered by each small
26 employer carrier to small employers and sole proprietors in a
27 geographic area.

1 (m) "Nonprofit health care corporation" means a nonprofit
 2 health care corporation operating pursuant to the nonprofit health
 3 care corporation reform act, 1980 PA 350, MCL 550.1101 to 550.1704.

4 (n) "Premium" means all money paid by a small employer, a sole
 5 proprietor, eligible employees, or eligible persons as a condition
 6 of receiving coverage from a small employer carrier, including any
 7 fees or other contributions associated with the health benefit
 8 plan.

9 (o) "Rating period" means the calendar period for which
 10 premiums established by a small employer carrier are assumed to be
 11 in effect, as determined by the small employer carrier.

12 (p) "Small employer" means any person, firm, corporation,
 13 partnership, **PROFESSIONAL EMPLOYER ORGANIZATION**, limited liability
 14 company, or association actively engaged in business who, on at
 15 least 50% of its working days during the preceding and current
 16 calendar years, employed at least 2 but not more than 50 eligible
 17 employees. In determining the number of eligible employees,
 18 ~~companies~~ **BOTH OF THE FOLLOWING APPLY:**

19 (i) **COMPANIES** that are affiliated companies or that are
 20 eligible to file a combined tax return for state taxation purposes
 21 shall be considered 1 employer.

22 (ii) **A PROFESSIONAL EMPLOYER ORGANIZATION SHALL BE CONSIDERED**
 23 **THE EMPLOYER OF ALL OF ITS COVERED EMPLOYEES, AND ALL COVERED**
 24 **EMPLOYEES OF 1 OR MORE CLIENTS PARTICIPATING IN A HEALTH BENEFIT**
 25 **PLAN SPONSORED BY A SINGLE PROFESSIONAL EMPLOYER ORGANIZATION SHALL**
 26 **BE CONSIDERED EMPLOYEES OF THE PROFESSIONAL EMPLOYER ORGANIZATION.**
 27 **AS USED IN THIS SUBDIVISION, "CLIENT", "COVERED EMPLOYEE", AND**

1 "PROFESSIONAL EMPLOYER ORGANIZATION" MEAN THOSE TERMS AS DEFINED IN
2 THE MICHIGAN PROFESSIONAL EMPLOYER ORGANIZATION REGULATORY ACT.

3 (q) "Small employer carrier" means either of the following:

4 (i) A carrier that offers health benefit plans covering the
5 employees of a small employer.

6 (ii) A carrier under section 3703(3).

7 (r) "Sole proprietor" means an individual who is a sole
8 proprietor or sole shareholder in a trade or business through which
9 he or she earns at least 50% of his or her taxable income as
10 defined in section 30 of the income tax act of 1967, 1967 PA 281,
11 MCL 206.30, excluding investment income, and for which he or she
12 has filed the appropriate internal revenue service form 1040,
13 schedule C or F, for the previous taxable year; who is a resident
14 of this state; and who is actively employed in the operation of the
15 business, working at least 30 hours per week in at least 40 weeks
16 out of the calendar year.

17 (s) "Waiting period" means, with respect to a health benefit
18 plan and an individual who is a potential enrollee in the plan, the
19 period that must pass with respect to the individual before the
20 individual is eligible to be covered for benefits under the terms
21 of the plan. For purposes of calculating periods of creditable
22 coverage under this chapter, a waiting period shall not be
23 considered a gap in coverage.

24 Enacting section 1. This amendatory act does not take effect
25 unless Senate Bill No.95th or House Bill No. 1037

26 of the 95th Legislature is enacted into law.