



LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON
COMMISSIONER

ADVISORY LETTER 2020-02

TO: ALL HEALTH INSURANCE ISSUERS AND HEALTH MAINTENANCE ORGANIZATIONS

FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE

RE: SMALL GROUP COVERAGE OF HUSBAND-AND-WIFE GROUPS UNDER THE LOUISIANA INSURANCE CODE.

DATE: April 22, 2020

I. Background

The purpose of Advisory Letter 2020-02 is to clarify, under the Louisiana Insurance Code, the status of two-member groups in which the employee and employer are married to one another (often referred to as “husband-and-wife groups.”). In particular, this advisory letter addresses an issue that has come to my attention in which a health insurance issuer (inclusive of health maintenance organizations hereinafter referred to as “issuer”) has expressed its intention to non-renew certain two-person group policies beginning on May 1 on the basis of those policies covering groups in which the members of the small employer group are married to one another, which the issuer believes to be impermissible under federal and state law.

As described in more detail below, the Louisiana Insurance Code defines such an arrangement as a “small employer” and provides for guaranteed renewability of coverage issued to such groups at the option of the plan sponsor. Federal definitions may be of interest for purposes of determining which federal requirements related to group and individual coverage are applicable to these husband-and-wife groups, but the determination of whether the arrangement constitutes a small employer group and whether the issuer may decline to issue or non-renew a policy covering members of such an arrangement are settled by the Louisiana Insurance Code alone.

II. Treatment of Husband-and-Wife Groups Under the Louisiana Insurance Code

Under applicable Louisiana law, husband-and-wife groups are small employers entitled to guaranteed availability pursuant to R.S. 22:1067 and guaranteed renewability at the option of the plan sponsor pursuant R.S. 22:1068. Under La. R.S. 22:1061(5)(e)(iii), a small employer for purposes of determining eligibility to participate in the small group market is defined as an employer who employed an average of at least one but not more than fifty employees on business days in the preceding calendar year and who employs at least one employee on the first day of the plan year. Moreover, the term “employee” means **any** individual employed by an employer.¹ The Louisiana Insurance Code makes no exception to this definition based on the marital status of the employer and employee and no basis exists to read such an exception into existence.

III. Application of Group Coverage Availability and Renewability Requirements to Husband-And-Wife Groups

Under R.S. 22:1067(A)(1)(a), issuers offering coverage in the small group market must accept every small employer, defined in R.S. 22:1061(5)(a) that applies for such coverage subject to any applicable exceptions found in R.S. 22:1067. Additionally, under R.S. 22:1068(A), issuers offering coverage in the small group market must renew and continue in force such coverage at the option of the plan sponsor subject to any applicable exceptions found in R.S. 22:1068. Marital status is not carved out as an exception under these statutes. As noted above, husband-and-wife groups fall within the definition of “small employer” for purposes of both R.S. 22:1067 and R.S. 22:1068 and are therefore covered by these requirements.

IV. Eligibility for Group Coverage

Nothing in this advisory should be interpreted to prohibit an issuer from determining whether an individual is truly an employee of the employer or to cover an ineligible individual. Issuers should act reasonably in judging evidence offered to substantiate eligibility and in making eligibility decisions. In making such a determination in the case of a husband-and-wife group, the issuer may look to, among other evidence, the capacity in which the employee-spouse is employed, the situs of work performed, the employee-spouse’s job duties and responsibilities, special training or licensure necessary to the employee-spouse’s position, and available corporate and regulatory

¹ See La. R.S. 22:1061(5)(d)

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documents. An individual whose status as an employee is doubtful does not become eligible as a result of marital status.

Baton Rouge, Louisiana, this 22nd day of April, 2020



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