



INSURANCE COMMISSIONER
State of Oklahoma

BULLETIN NO. LH 2016-03.1

TO: Insurers Writing Small Group Health Insurance in Oklahoma

RE: Small Group Definition, Correction of Previous Guidance

FROM: Oklahoma Insurance Department

DATE: May 16, 2016

Over the last eighteen years, the Department has published guidance on four separate occasions concerning whether sole proprietors qualified for group health insurance. First, on March 10, 1998, the question was answered by reference to the Oklahoma Small Employer Health Insurance Reform Act (36 O.S. §§ 6511-6529 (“Reform Act”). Next, in 2016 the Department published guidance in the form of Bulletins LH 2016-01 and LH 2016-03 concerning the interplay between state law and various federal statutes, regulations and pronouncements dealing with this subject. Finally, in March 2016, the Department withdrew Bulletin LH 2016-03 after receiving more questions concerning sole proprietors and partnerships.

There are many permutations of “sole proprietor” and “sole proprietor and spouse”. Sole proprietors, may be treated differently under federal law depending upon whether the sole proprietor is an “employee”, “owner”, “shareholder”, “partner”, “member” or “manager” of various entities including C corporations, S corporations, partnerships and limited liability companies.

As stated in our Bulletin LH 2016-03 dated February 17, 2016, there exists a conflict between the Oklahoma Small Employer Health Insurance Reform Act and The Public Health Services Act (“PHSA”). The state law requires a small group to have 2-50 employees and federal law says a “small group” is 1-50 employees. The confusion arises when companies are faced with whether “sole proprietors” and “sole proprietors and spouses” may be counted as employees. The underlying question is whether health coverage for these “micro groups” should be written as “small group” or individual business.

OID no longer has the authority to answer this question because PHSA and other federal laws provide that in case of a conflict with state law, the federal law supersedes state law.

Unless and until there is a return of jurisdiction to the state, this entire issue is in the hands of federal agencies.

Conclusion

1. The provisions of The Public Health Services Act and related federal law control in regard to the conflict between state law and federal law.
2. Since state law is preempted, any guidance from OID regarding this issue is purely gratuitous, and may not be relied upon.
3. Issuers will have to rely on the federal law, regulations and CMS guidance for answers to questions regarding whether a particular policy may be written in the individual or in the small group market.
4. All previous OID guidance regarding this issue is withdrawn.

This guidance resolves the differences in state and federal law governing the treatment of sole proprietor businesses by insurers with respect to new placement of coverage. Existing sole proprietor groups issued under Title 36 O.S. 6512 are permitted to keep their coverage and insurers may not non-renew coverage based solely upon this Bulletin.

Questions or comments applicable to this bulletin should be directed to Mike Rhoads (Mike.Rhoads@oid.ok.gov) or Gordon Amini (Gordon.Amini@oid.ok.gov), Oklahoma Insurance Department, Five Corporate Plaza, 3625 NW 56th, Suite 100, Oklahoma City, OK 73112.

The Oklahoma Insurance Department encourages readers of this notice to periodically check the Department's web site <http://www.ok.gov/oid/> for news and updates to Bulletins and other relevant material.