CHAPTER 635

SMALL EMPLOYER HEALTH INSURANCE

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Cross–reference: See definitions in ss. 600.03 and 628.02.
Cross–reference: See also s. Ins 8.40, Wis. adm. code.

635.01 Scope. This chapter applies to all group health insurance plans, policies or certificates, written on risks or operations in this state, providing coverage for employees of a small employer, or employees of a small employer and the employer, and to individual health insurance policies, written on risks or operations in this state, providing coverage for employees of a small employer, or employees of a small employer and the employer when 3 or more are sold to or through a small employer.
History: 1991 a. 39; 1997 a. 27.

635.02 Definitions. In this chapter:

(1) "Base premium rate" means the lowest premium rate chargeable under a rating system to small employers with similar case characteristics and the same or similar benefit design characteristics in the same class of business.

(1m) "Benefit design characteristics" means covered services, cost sharing, utilization management, managed care networks and other features that differentiate plan or coverage designs.

(1p) "Bona fide association" has the meaning given in s. 632.745 (3).

(2) "Case characteristics" means the demographic, actuarially based characteristics of the employees of a small employer, and the employer, if covered, such as age, sex, and geographic location, used by a small employer insurer to determine premium rates for a small employer. "Case characteristics" does not include loss or claim history, health status, occupation, duration of coverage, or other factors related to claim experience.

(3) "Class of business" means all or a distinct grouping of small employers determined in accordance with rules promulgated by the commissioner under s. 635.05 (4).

(3g) "Employer" has the meaning given in s. 632.745 (6).

(3j) "Established geographic service area" means a geographic area within which a small employer insurer provides coverage and that has been approved by the commissioner.

(3k) "Group health benefit plan" has the meaning given in s. 632.745 (9).

(3m) "Health benefit plan" has the meaning given in s. 632.745 (11).

(4m) "Midpoint rate" means the arithmetic average of the base premium rate and the corresponding highest premium rate.

(4t) "Network plan" has the meaning given in s. 632.745 (19).

(5) "New business premium rate" means the premium rate charged or offered to small employers with similar case characteristics in the same class of business for newly issued health insurance with the same or similar benefit design characteristics.

(6) "Rating period" means the period, determined by a small employer insurer, during which a premium rate established by the small employer insurer remains in effect.

(6m) "Restricted network provision" means a provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on obtaining services or articles from health care providers that have contracted with the small employer insurer to provide health care services or articles to covered individuals.

(7) (a) "Small employer" means, with respect to a calendar year and a plan year, an employer that employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year, or that is reasonably expected to employ an average of at least 2 but not more than 50 employees on business days during the current calendar year if the employer was not in existence during the preceding calendar year, and that employs at least 2 employees on the first day of the plan year.

(b) Notwithstanding par. (a), "small employer" does not include any of the following:

1. A health benefit purchasing cooperative under s. 185.99 that provides health care benefits for more than 50 individuals who are members or employees of one or more members.

2. A member of a cooperative specified in subd. 1.

3. A professional employer organization, as defined in s. 202.21 (5), or a professional employer group, as defined in s. 202.21 (4), that provides health care benefits to more than 50 employees performing services for a client, as defined in s. 202.21 (2).

4. A client of a professional employer organization or professional employer group specified in subd. 3., if the employees of the professional employer organization or professional employer group performing services for the client are offered health care benefits under a health benefit plan sponsored by the professional employer organization or professional employer group.

(8) "Small employer insurer" means an insurer that is authorized to do business in this state, in one or more lines of insurance that includes health insurance, and that offers group health benefit plans covering eligible employees of one or more small employers in this state, or that sells 3 or more individual health benefit plans to a small employer, covering eligible employees of the small employer. The term includes a health maintenance organization, as defined in s. 609.01 (2), a preferred provider plan, as defined in s. 609.01 (4), and an insurer operating as a cooperative association organized under ss. 185.981 to 185.985, but does not include a limited service health organization, as defined in s. 609.01 (3).

(9) "Small group market" has the meaning given in s. 632.745 (26).
History: 1991 a. 39, 250; 1993 a. 112; 1995 a. 289, 453; 1997 a. 27; 2001 a. 16; 2005 a. 231; 2007 a. 189; 2013 a. 20.

635.05 Rate regulation. Notwithstanding ch. 625, the commissioner shall promulgate rules:

(1) Establishing restrictions on premium rates that a small employer insurer may charge a small employer such that the premium rates charged to small employers with similar case characteristics for the same or similar benefit design characteristics do not vary from the midpoint rate for those small employers by more than 35 percent of that midpoint rate.

(2) Establishing restrictions on increases in premium rates that a small employer insurer may charge a small employer such that:

(a) The percentage increase in the premium rate for a new rating period does not exceed the sum of the following:

1. The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period, or the percentage change in the base premium rate in the case of a class of business for which the small employer insurer is not issuing new policies.

2. An adjustment, not to exceed 15 percent per year, adjusted proportionally for rating periods of less than one year, for such rating factors as claim experience, health status, occupation, and duration of coverage, determined in accordance with the small employer insurer's rate manual or rating procedures.

3. An adjustment for a change in case characteristics or in benefit design characteristics, determined in accordance with the small employer insurer's rate manual or rating procedures.

(b) The percentage increase in the premium rate for a new rating period for a policy issued before August 15, 1991, does not exceed the sum of par. (a) 1. and 3., unless premium rates are in compliance with the rules promulgated under sub. (1).

(3) Requiring the premium rate of a policy issued before August 15, 1991, to comply with the rules promulgated under sub. (1) no later than 3 years after August 15, 1991.

(4) Defining the terms necessary for compliance with this section.

(5) Ensuring that small employers are classified using objective criteria.

(6) Ensuring that rating factors are applied objectively and consistently within a class of business.

(7) Specifying the manner in which rates must be published under s. 635.12.

History: 1991 a. 39, 250; 2001 a. 16.

635.10 Uniform employee application. Beginning no later than August 1, 2003, every small employer insurer shall use the uniform employee application form developed by the commissioner by rule under s. 601.41 (8) (b) when a small employer applies for coverage under a group health benefit plan offered by the small employer insurer.

History: 2001 a. 109.

635.11 Disclosure of rating factors and renewability provisions. (1m) Before the sale of a plan or policy subject to this chapter, a small employer insurer shall disclose to a small employer all of the following:

(a) The small employer insurer's right to increase premium rates and the factors limiting the amount of increase.

(b) The extent to which benefit design characteristics and case characteristics affect premium rates.

(c) The extent to which rating factors and changes in benefit design characteristics and case characteristics affect changes in premium rates.

(d) The small employer's renewability rights.

(e) As part of the small employer insurer's solicitation and sales materials, the availability of the information under par. (f).

(f) Upon the request of the small employer, the following information:

1. The provisions, if any, of the plan or policy relating to preexisting condition exclusions.

2. The benefits and premiums available under all health insurance coverage offered by the small employer insurer for which the small employer is qualified.

(2m) Information required to be disclosed under this section shall be provided in a manner that is understandable to a small employer and shall be sufficient to reasonably inform a small employer of the small employer's rights and obligations under the health insurance coverage.

(3m) A small employer insurer is not required under this section to disclose information that is proprietary or trade secret information under applicable law.

History: 1991 a. 39, 250, 315; 1997 a. 27.

635.12 Annual publication of rates. Every small employer insurer shall annually publish the small employer insurer's current new business premium rates. The rates shall be published in the manner and according to categories required by rule under s. 635.05 (7). New business premium rates for coverage under the health care coverage program under subch. X of ch. 40 shall be published as required under s. 40.98 (2) (d).

NOTE: Subchapter X of ch. 40, including s. 40.98 (2) (d), was repealed by 1999 Wis. Act 9, eff. 1–1–10.

History: 2001 a. 16.

635.13 Records. A small employer insurer shall maintain at its principal place of business complete and detailed records relating to its rating methods and practices and its renewal underwriting methods and practices, and shall make the records available to the commissioner upon request.

History: 1991 a. 39, 250; 1997 a. 27; 2015 a. 90.

Cross–reference: See also s. Ins 8.56, Wis. adm. code.

635.15 Temporary suspension of rate regulation. The commissioner may suspend the operation of all or any part of s. 635.05 with respect to one or more small employers for one or more rating periods upon the written request of a small employer insurer and a finding by the commissioner that the suspension is necessary in light of the financial condition of the small employer insurer or that the suspension would enhance the efficiency and fairness of the small employer health insurance market.

History: 1991 a. 39, 250.

635.18 Fair marketing standards. (1) Every small employer insurer shall actively market health benefit plan coverage to small employers in the state.

(2) (a) Except as provided in par. (b), a small employer insurer or an intermediary may not, directly or indirectly, do any of the following:

1. Discourage a small employer from applying, or direct a small employer not to apply, for coverage with the small employer insurer because of the health status, claims experience, industry, occupation or geographic location of the small employer.

2. Encourage or direct a small employer to seek coverage from another insurer because of the health status, claims experience, industry, occupation or geographic location of the small employer.

(b) Paragraph (a) does not prohibit a small employer insurer or an intermediary from providing a small employer with information about an established geographic service area or a restricted network provision of the small employer insurer.

(3) (a) Except as provided in par. (b), a small employer insurer may not, directly or indirectly, enter into any contract, agreement or arrangement with an intermediary that provides for or results in compensation to an intermediary for the sale of a health benefit plan that varies according to the health status, claims experience, industry, occupation or geographic location of the small employer or eligible employees or dependents.

(b) Payment of compensation on the basis of percentage of premium is not a violation of par. (a) if the percentage does not vary based on the health status, claims experience, industry, occupation or geographic area of the small employer or eligible employees or dependents.

(4) A small employer insurer may not terminate, fail to renew or limit its contract or agreement of representation with an intermediary for any reason related to the health status, claims experience, occupation or geographic location of the small employers or

eligible employees or their dependents placed by the intermediary with the small employer insurer.

(5) A small employer insurer or an intermediary may not induce or otherwise encourage a small employer to separate or otherwise exclude an employee from health coverage or benefits provided in connection with the employee's employment.

(6) Denial by a small employer insurer of an application for coverage from a small employer shall be in writing and shall state the reason or reasons for the denial.

(7) A 3rd–party administrator that enters into a contract, agreement or other arrangement with a small employer insurer to provide administrative, marketing or other services related to the offering of health benefit plans to small employers in this state is subject to this chapter as if it were a small employer insurer.

(8) The commissioner may by rule establish additional standards to provide for the fair marketing and broad availability of health benefit plans to small employers in this state.

History: 1991 a. 250, 315; 1997 a. 27.

635.19 Issuance of coverage in small group market. **(1)** (a) Except as provided in subs. (2) to (6), a small employer insurer that offers a group health benefit plan in the small group market shall do all of the following:

1. Accept any small employer in the state that applies for such coverage.

2. Accept for enrollment under such coverage any eligible individual who applies for enrollment during the period in which the individual first becomes eligible to enroll under the terms of the group health benefit plan.

3. Place no restriction on an eligible individual under par. (b) that is inconsistent with s. 632.746 or 632.748.

(b) For purposes of this section, whether an individual is an "eligible individual" in relation to a small employer shall be determined in accordance with all of the following:

1. The terms of the group health benefit plan under which the individual is applying for enrollment.

2. Rules of the small employer insurer offering the group health benefit plan under which the individual is applying for enrollment, which rules must apply uniformly in this state to small employers in the small group market.

3. All state laws that apply to small employer insurers and the small group market.

(2) (a) A small employer insurer that offers a group health benefit plan in the small group market through a network plan may do any of the following:

1. Limit the small employers that may apply for such coverage to those with eligible individuals who reside, live or work in the service area of the network plan.

2. Within the service area of the network plan, deny such coverage to small employers if the small employer insurer demonstrates to the commissioner all of the following:

a. That the insurer does not have the capacity to deliver services adequately to enrollees of any additional groups because of its obligations to existing group contract holders and enrollees.

b. That the insurer is applying this subdivision uniformly to all small employers without regard to the claims experience of those small employers or their employees or employees' dependents or any other health status–related factor of those employees or their dependents.

(b) A small employer insurer that denies coverage under par. (a) 2. in any service area may not offer coverage in the small group market in that service area for 180 days after the date on which the coverage was denied.

(3) (a) A small employer insurer that offers a group health benefit plan in the small group market may deny small employers coverage under such a plan in the small group market if the small employer insurer demonstrates to the commissioner all of the following:

1. That the insurer does not have the financial reserves necessary to underwrite additional coverage.

2. That the insurer is applying this paragraph uniformly to all small employers in the small group market in the state in accordance with applicable state law and without regard to the claims experience of those small employers or their employees or employees' dependents or any other health status–related factor of those employees or their dependents.

(b) A small employer insurer that denies coverage under par. (a) may not offer a group health benefit plan in the small group market in the state for 180 days after the date on which the coverage was denied or until the insurer demonstrates to the commissioner that the insurer has sufficient financial reserves to underwrite additional coverage, whichever is later.

(4) Subsection (1) shall not be construed to preclude a small employer insurer from establishing, for the offering of a group health benefit plan in the small group market, any of the following:

(a) Rules or requirements relating to the minimum level or amount of small employer contribution toward the premium for the enrollment of participants and beneficiaries.

(b) Rules or requirements relating to the minimum number or percentage of participants or beneficiaries that must be enrolled in relation to a specified number or percentage of eligible individuals or employees of a small employer.

(5) Subsection (1) does not apply to a group health benefit plan offered by a small employer insurer in the small group market if all of the following apply:

(a) The group health benefit plan is offered in the small group market only through one or more bona fide associations.

(b) The small employer insurer offering the group health benefit plan makes the coverage available to all members of a bona fide association regardless of any health status–related factors of the members or individuals eligible for coverage through the members.

(c) The small employer insurer offering the group health benefit plan complies with any rules of the commissioner that are reasonably designed to prevent the use of an association for risk segmentation.

(6) The commissioner may by rule permit an exception to sub. (1) with respect to a small employer for which coverage is nonrenewed or discontinued for a reason specified under s. 632.749 (2) (a) or (b).

History: 1997 a. 27.