



Small Group Counting

Commerce Insurance Division

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Contents

Introduction.....	3
Section 1.1	4
Relevant State Law Citations.....	4
Section 1.2	10
Relevant Federal Laws and Guidance	10
Common Law Employees	11

Introduction

The allowable counting method for determining eligible employees to count towards group size in the small group health insurance market must comply with 62L.02 Subd 13a. Please review the cited laws and example cases within this PDF to ensure compliance with Minnesota law.

Note: The following information has been compiled as a tool for Commerce Department analysts to use in reviewing small group filings submitted to the Department for approval in Minnesota. The tool is designed as an internal Commerce Department resource to outline certain state or federal laws that could apply to provisions typically found in major medical certificates or policy forms. It may be periodically updated to reflect statutory changes. Additional state or federal law requirements may exist to the extent they apply to provisions not typically found in policy forms or certificates. Compliance with these additional requirements, if applicable to the product filing, would still be required even though they are not listed in this tool.

While the Department is making this tool publicly available, this is meant only to be a tool to assist you with your product filings. This list is in no way exhaustive or a complete statement of all requirements and provisions that might be applicable, and does not replace the form compliance review process. Please note that the tool may only include part of an applicable law or regulation. Therefore, Companies or health plans should refer to all relevant Minnesota Statutes and Rules as well as applicable Federal law in developing product filings that they submit to the Department for approval. To the extent the provisions in this tool conflict with state or federal law, companies making filings should comply with the language of state or federal law. This tool is a representation of general provisions and should not be construed as a legal opinion or advice.

Section 1.1

Relevant State Law Citations

The statutes listed below are quoted directly from state law. If the language is not directly from MN law, it will be italicized.

62L.01 Subd. 2. Jurisdiction. Sections 62L.01 to 62L.22 apply to any health carrier that offers, issues, delivers, or renews a health benefit plan to a small employer.

62L.02 Definitions.

Subd. 13. Eligible employee. "Eligible employee" means an employee who has satisfied all employer participation and eligibility requirements.

Subd. 13a. Employee. "Employee" means an individual employed for at least 20 hours per week and includes a sole proprietor or a partner of a partnership, if the sole proprietor or partner is included under a health benefit plan of the employer, but does not include individuals who work on a temporary, seasonal, or substitute basis. "Employee" also includes a retiree or a disabled former employee required to be covered under sections [62A.147](#) and [62A.148](#).

Subd. 14a. Guaranteed issue. "Guaranteed issue" means that a health carrier shall not decline an application by a small employer for any health benefit plan offered by that health carrier and shall not decline to cover under a health benefit plan any eligible employee or eligible dependent, including persons who become eligible employees or eligible dependents after initial issuance of the health benefit plan.

Subd. 15. Health benefit plan. "Health benefit plan" means a policy, contract, or certificate offered, sold, issued, or renewed by a health carrier to a small employer for the coverage of medical and hospital benefits. Health benefit plan includes a small employer plan. ... For the purpose of this chapter, a health benefit plan issued to eligible employees of a small employer who meets the participation requirements of section [62L.03, subdivision 3](#), is considered to have been issued to a small employer. A health benefit plan issued on behalf of a health carrier is considered to be issued by the health carrier.

Subd. 17. Health plan. "Health plan" means a health plan as defined in section [62A.011](#) and includes individual and group coverage regardless of the size of the group, unless otherwise specified.

62A.011 DEFINITIONS. Subdivision 1. Applicability. Subd. 3. Health plan. "Health plan" means a policy or certificate of accident and sickness insurance as defined in section [62A.01](#) offered by an insurance company licensed under chapter 60A; a subscriber contract or certificate offered by a nonprofit health service plan corporation operating under chapter 62C; a health maintenance contract or certificate offered by a health maintenance organization operating under chapter 62D; a health benefit certificate offered by a fraternal benefit society operating under chapter 64B; or health coverage offered by a joint self-insurance employee health plan operating under chapter 62H. Health plan means individual and group coverage, unless otherwise specified...

62A.01 REQUIREMENTS; CERTIFICATES OF COVERAGE UNDER POLICY OF ACCIDENT AND SICKNESS INSURANCE.

Subdivision 1. Definition. The term "policy of accident and sickness insurance" as used herein includes any policy covering the kind of insurance described in section [60A.06, subdivision 1](#), clause (5)(a).

Subd. 2. Equal protection. A certificate of insurance or similar evidence of coverage issued to a Minnesota resident shall provide coverage for all benefits required to be covered in group policies in Minnesota by this chapter and chapter 62E. This subdivision supersedes any inconsistent provision of this chapter and chapter 62E. A policy of accident and sickness insurance that is issued or delivered in this state and that covers a person residing in another state may provide coverage or contain provisions that are less favorable to that person than required by this chapter and chapter 62E. Less favorable coverages or provisions must meet the requirements that the state in which the person resides would have required had the policy been issued or delivered in that state.... *(rest not applicable to small group)*.

Subd. 26. Small employer.

- a) "Small employer" means, with respect to a calendar year and a plan year, a person, firm, corporation, partnership, association, or other entity actively engaged in business in Minnesota, including a political subdivision of the state, that employed an average of at least one, not including a sole proprietor, but not more than 50 current employees on business days during the preceding calendar year and that employs at least one current employee, not including a sole proprietor, on the first day of the plan year. A small employer plan may be offered through a domiciled association to self-employed individuals and small employers who are members of the association, even if the self-employed individual or small employer has fewer than two current employees. Entities that are treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the federal Internal Revenue Code are considered a single employer for purposes of determining the number of current employees. Small employer status must be determined on an annual basis as of the renewal date of the health benefit plan. The provisions of this chapter continue to apply to an employer who no longer meets the requirements of this definition until the annual renewal date of the employer's health benefit plan. If an employer was not in existence throughout the preceding calendar year, the determination of whether the employer is a small employer is based upon the average number of current employees that it is reasonably expected that the employer will employ on business days in the current calendar year. For purposes of this definition, the term employer includes any predecessor of the employer. An employer that has more than 50 current employees but has 50 or fewer employees, as "employee" is defined under United States Code, title 29, section 1002(6), is a small employer under this subdivision.
- b) Where an association, as defined in section [62L.045](#), comprised of employers contracts with a health carrier to provide coverage to its members who are small employers, the association and health benefit plans it provides to small employers, are subject to section [62L.045](#), with respect to small employers in the association, even though the association also provides coverage to its members that do not qualify as small employers.
- c) If an employer has employees covered under a trust specified in a collective bargaining agreement under the federal Labor-Management Relations Act of 1947, United States Code, title 29, section

141, et seq., as amended, or employees whose health coverage is determined by a collective bargaining agreement and, as a result of the collective bargaining agreement, is purchased separately from the health plan provided to other employees, those employees are excluded in determining whether the employer qualifies as a small employer. Those employees are considered to be a separate small employer if they constitute a group that would qualify as a small employer in the absence of the employees who are not subject to the collective bargaining agreement.

Subd. 27. Small employer market.

- a) "Small employer market" means the market for health benefit plans for small employers.
- b) A health carrier is considered to be participating in the small employer market if the carrier offers, sells, issues, or renews a health benefit plan to: (1) any small employer; or (2) the eligible employees of a small employer offering a health benefit plan if, with the knowledge of the health carrier, either of the following conditions is met: (i) any portion of the premium or benefits is paid for or reimbursed by a small employer; or (ii) the health benefit plan is treated by the employer or any of the eligible employees or dependents as part of a plan or program for the purposes of the Internal Revenue Code, section 106, 125, or 162.

Subd. 29. Waiting period. "Waiting period" means, with respect to an individual who is a potential enrollee under a health benefit plan, the period that must pass with respect to the individual before the individual is eligible, under the employer's eligibility requirements, for coverage under the health benefit plan.

62L.03 AVAILABILITY OF COVERAGE

Subdivision 1. Guaranteed issue and reissue.

- a) Every health carrier shall, as a condition of authority to transact business in this state in the small employer market, affirmatively market, offer, sell, issue, and renew any of its health benefit plans, on a guaranteed issue basis, to any small employer, including a small employer covered by paragraph (b), that meets the participation and contribution requirements of subdivision 3, as provided in this chapter.
- b) A small employer that no longer meets the definition of small employer because of a reduction in workforce may continue coverage as a small employer for 12 months from the date the group is reduced to one employee.

Note: Exceptions are provided to subdivision 1 in subdivision 2, for both employees and employers outside of an HMO's service area, or for issuers experiencing financial impairment. An enrollment cap request is available to small group issuers experiencing financial impairment under both state and federal law.

Subd. 3. Minimum participation and contribution.

- a) A small employer that has at least 75 percent of its eligible employees who have not waived coverage participating in a health benefit plan and that contributes at least 50 percent toward the cost of coverage of each eligible employee must be guaranteed coverage on a guaranteed issue basis from any health carrier participating in the small employer market.
- b) The participation level of eligible employees must be determined at the initial offering of coverage and at the renewal date of coverage. A health carrier must not increase the participation requirements applicable to a small employer at any time after the small employer has been accepted for coverage. For the purposes of this subdivision, waiver of coverage includes only waivers due to: (1) coverage under another group health plan; (2) coverage under Medicare Parts A and B; or (3) coverage under medical assistance under chapter 256B.
- c) If a small employer does not satisfy the contribution or participation requirements under this subdivision, a health carrier may voluntarily issue or renew individual health plans, or a health benefit plan which must fully comply with this chapter. A health carrier that provides a health benefit plan to a small employer that does not meet the contribution or participation requirements of this subdivision must maintain this information in its files for audit by the commissioner. A health carrier may not offer an individual health plan, purchased through an arrangement between the employer and the health carrier, to any employee unless the health carrier also offers the individual health plan, on a guaranteed issue basis, to all other employees of the same employer. An arrangement permitted under section 62L.12, subdivision 2, paragraph (l), is not an arrangement between the employer and the health carrier for purposes of this paragraph.

Note: At the time of this writing, the option for a small employer to use the individual market is only allowed under federal law if it is done through a QSEHRA and compliant with the QSEHRA regulations and guidance. <https://www.irs.gov/pub/irs-drop/n-17-67.pdf>

- d) If a small employer cannot meet either the participation or contribution requirement, the small employer may purchase coverage only during an open enrollment period each year between November 15 and December 15.

62L.045 ASSOCIATIONS.

Subdivision 1. Definitions. For purposes of this section, the following terms have the meanings given: a)

"Association" means:

- 1. an association as defined in section [60A.02](#);
- 2. a group or organization of political subdivisions;
- 3. a service cooperative created under section [123A.21](#); or
- 4. a joint self-insurance pool authorized under section [471.617, subdivision 2](#).

b) "Qualified association" means an association, as defined in this subdivision, that:

1. is registered with the commissioner of commerce;
 2. provides health plan coverage through a health carrier that participates in the small employer market in this state, other than through associations, to the extent that the association purchases health plan coverage rather than self-insures;
 3. has and adheres to membership and participation criteria and health coverage eligibility criteria that are not designed to disproportionately include or attract small employers that are likely to have low costs of health coverage or to disproportionately exclude or repel small employers that are likely to have high costs of health coverage; and
 4. permits any small employer that meets its membership, participation, and eligibility criteria to become a member and to obtain health coverage through the association.
- c) "Health coverage" means a health benefit plan as defined in section [62L.02, subdivision 15](#); or similar self-insured coverage offered, sold, issued, or renewed by an association as defined in paragraph (a) to a small employer.

Subd. 2. Qualified associations.

- a) A qualified association, as defined in this section, and health coverage offered by it, to it, or through it, to a small employer in this state must comply with the requirements of this chapter regarding guaranteed issue, guaranteed renewal, preexisting condition limitations, treatment of MCHA enrollees, and the definition of dependent, and with section [62A.65, subdivision 5](#), paragraph (b). They must also comply with all other requirements of this chapter not specifically exempted in paragraph (b).
- b) A qualified association and a health carrier offering, selling, issuing, or renewing health coverage to, or to cover, a small employer in this state through the qualified association, may, but are not, in connection with that health coverage, required to:
 1. offer the two small employer plans described in section [62L.05](#); and
 2. offer to small employers that are not members of the association, health coverage offered to, by, or through the qualified association.

Subd. 3. Other associations. Associations as defined in this section that are not qualified associations; health coverage offered, sold, issued, or renewed by or through them; and the health carriers doing so, must fully comply with this chapter with respect to small employers that are members of the association.

Subd. 4. Principles; association coverage.

- a) This subdivision applies to associations as defined in this section, whether qualified associations or not, and is intended to clarify subdivisions 1 to 3.
- b) This section applies only to associations that provide health coverage to small employers.
- c) An arrangement between the health carrier and the association, once entered into, must comply with guaranteed issue and guaranteed renewal with respect to members of the association that are small employers and persons covered through them.

- d) When an arrangement between a health carrier and an association has validly terminated, the health carrier has no continuing obligation to small employers and persons covered through them, except as otherwise provided in:
 - 1. section [62A.65, subdivision 5](#), paragraph (b);
 - 2. any other continuation or conversion rights applicable under state or federal law; and
 - 3. section [60A.082](#), relating to group replacement coverage, and rules adopted under that section.
- e) When an association's arrangement with a health carrier has terminated and the association has entered into a new arrangement with that health carrier or a different health carrier, the new arrangement is subject to section [60A.082](#) and rules adopted under it, with respect to members of the association that are small employers and persons covered through them.
- f) An association that offers its members more than one plan of health coverage may have uniform rules restricting movement between the plans of health coverage, if the rules do not discriminate against small employers.
- g) This chapter does not require or prohibit separation of an association's members into one group consisting only of small employers and another group or other groups consisting of all other members. The association must comply with this section with respect to the small employer group.
- h) For purposes of this section, "member" of an association includes an employer participant in the association.
- i) For purposes of this section, health coverage issued to, or to cover, a small employer includes a certificate of coverage issued directly to the employer's employees and dependents, rather than to the small employer.

62L.07 SMALL EMPLOYER REQUIREMENTS.

Subdivision 1. Verification of eligibility. Health benefit plans must require that small employers offering a health benefit plan maintain information verifying the continuing eligibility of the employer, its employees, and their dependents, and provide the information to health carriers on a quarterly basis or as reasonably requested by the health carrier.

Subd. 2. Waivers. Health benefit plans must require that small employers offering a health benefit plan maintain written documentation indicating that each eligible employee was informed of the availability of coverage through the employer and of a waiver of coverage by the eligible employee. This documentation must be provided to the health carrier upon reasonable request.

Section 1.2

Relevant Federal Laws and Guidance

For the most part, the state laws provided above cover most topics in terms of counting employees and determining whether coverage is available to a small employer. However, there are a few federal laws and guidance that an issuer must also consider.

CODE OF FEDERAL REGULATIONS – 45 CFR part 147 - Health insurance reform requirements

§ 147.104 Guaranteed availability of coverage.

- a) Guaranteed availability of coverage in the individual and group market. Subject to paragraphs (b) through (d) of this section, a [health insurance issuer](#) that offers [health insurance coverage](#) in the individual, small group, or [large group market](#) in a [State](#) must offer to any individual or employer in the [State](#) all [products](#) that are approved for sale in the applicable market, and must accept any individual or employer that applies for any of those [products](#).
- b) Enrollment periods. A [health insurance issuer](#) may restrict enrollment in [health insurance coverage](#) to open or [special enrollment](#) periods.
 1. Open enrollment periods –
 - i. Group market.
 - A. Subject to [paragraph \(b\)\(1\)\(i\)\(B\)](#) of this section, a [health insurance issuer](#) in the [group market](#) must allow an employer to purchase [health insurance coverage](#) for a group health [plan](#) at any point during the year.
 - B. In the case of a group health [plan](#) in the [small group market](#) that cannot comply with employer contribution or group participation rules for the offering of [health insurance coverage](#), as allowed under applicable [State](#) law and in the case of a QHP offered in the SHOP, as permitted by § [156.285\(e\)](#) of this subchapter, a [health insurance issuer](#) may restrict the availability of coverage to an annual enrollment period that begins November 15 and extends through December 15 of each calendar year.

§ 147.106 Guaranteed renewability of coverage.

- a) General rule. Subject to paragraphs (b) through (d) of this section, a [health insurance issuer](#) offering [health insurance coverage](#) in the individual, small group, or [large group market](#) is required to renew or continue in force the coverage at the option of the [plan](#) sponsor or the individual, as applicable.
- b) Exceptions. An [issuer](#) may nonrenew or discontinue [health insurance coverage](#) offered in the group or [individual market](#) based only on one or more of the following:

3. Violation of participation or contribution rules. In the case of group [health insurance coverage](#), the [plan](#) sponsor has failed to comply with a material [plan](#) provision relating to employer contribution or group participation rules, pursuant to applicable [state](#) law. For purposes of this paragraph the following apply:

- i. (i) The term “employer contribution rule” means a requirement relating to the minimum level or amount of employer contribution toward the premium for enrollment of participants and beneficiaries.
- ii. (ii) The term “group participation rule” means a requirement relating to the minimum number of participants or beneficiaries that must be enrolled in relation to a specified percentage or number of [eligible individuals](#) or employees of an employer.

Common Law Employees

According to the IRS, a licensed, commissioned, or ordained minister is generally the common law employee of the church, denomination, sect, or organization that employs him or her to provide ministerial services. Ministers are considered an employee if the church or organization they perform services for has the legal right to control both what they do and how they do it, even if they have considerable discretion and freedom of action. If a common law employee is misclassified by the employer as a Form 1099 worker, this has no bearing on their classification as an employee. Use of the IRS Form 1099 should not be a barrier to a church minister receiving small group health insurance, nor the church being classified as a small employer. See S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341 and also Toyota Motor Sales U.S.A., Inc. v. Superior Court (1990) 220 Cal.App.3d 864.

Federal employment and benefit laws

The 50 employee federal threshold triggers many federal employment and benefit laws that most employers would have to follow, including FMLA, affirmative action planning requirements, Equal Employment Opportunity reporting, employer shared responsibility penalty provisions, and ACA large group reporting (Forms 1094-C and 1095-C) disclosure or use.