

CHAPTER 2023-212

Committee Substitute for Committee Substitute for House Bill No. 897

An act relating to group health plans; amending s. 624.438, F.S.; making technical changes; revising the definition of and providing requirements for bona fide groups for purposes of issuance of certificates of authority and multiple-employer welfare arrangements; amending s. 624.441, F.S.; making a technical change; amending s. 627.654, F.S.; conforming a provision to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (1) of section 624.438, Florida Statutes, is amended to read:

624.438 General eligibility.—

(1) To meet the requirements for issuance of a certificate of authority and to maintain a multiple-employer welfare arrangement, an arrangement:

(b) Must be established by a trade association, industry association, professional association of employers or professionals, or a bona fide group that as defined in 29 C.F.R. part 2510.3-5 which has a constitution or bylaws specifically stating its purpose and that which has been organized for purposes in addition to obtaining or providing insurance.

1. A trade association consists of employer members ~~member~~ employers who are in the same trade as recognized by the appropriate licensing agency.

2. An industry association consists of employer members ~~member~~ employers who are in the same major group code, as defined by the Standard Industrial Classification Manual issued by the federal Office of Management and Budget, unless restricted by subparagraph 1. or subparagraph 3.

3. A professional association consists of employer members ~~member~~ employers who are of the same profession as recognized by the appropriate licensing agency.

4. A bona fide group is a group or association of employers which meets the following requirements:

a. The primary purpose of the group or association may be to offer and provide health coverage to its employer members and their employees. However, the group or association must also have at least one substantial business purpose unrelated to such primary purpose. For purposes of this sub-subparagraph, a substantial business purpose is deemed to exist if the group or association would be a viable entity in the absence of sponsoring an

employee benefit plan. A substantial business purpose includes promoting common business interests in a given trade or employer community and is not required to be a for-profit activity.

b. Each employer member of the group or association which participates in the group health plan is a person acting directly as an employer of at least one employee who is a participant covered under the plan.

c. The group or association has a formal organizational structure with a governing body and has bylaws or other similar indications of formality.

d. The functions and activities of the group or association are controlled by its employer members, and the group's or association's employer members that participate in the group health plan control the plan. Control must be present both in form and in substance.

e. The employer members have a principal place of business in the same region that does not exceed the boundaries of a single state or metropolitan area, even if the metropolitan area includes more than one state.

f. The group or association does not make health coverage through the group's or association's group health plan available to any person other than:

(I) An employee of a current employer member of the group or association;

(II) A former employee of a current employer member of the group or association who became eligible for coverage under the group health plan when the former employee was an employee of the employer; or

(III) A beneficiary, such as a spouse or dependent child, of an individual described in sub-sub-subparagraph (I) or sub-sub-subparagraph (II).

g. The group or association and the health coverage offered by the group or association comply with the nondiscrimination provisions of s. 627.6699.

h. The group or association is not a health insurance issuer as defined in s. 733(b)(2) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. s. 1191b(b)(2), or owned or controlled by such a health insurance issuer or by a subsidiary or affiliate of such a health insurance issuer, other than to the extent such entities participate in the group or association in their capacity as employer members of the group or association.

The requirements of this paragraph do not apply to an arrangement licensed before April 1, 1995, regardless of the nature of its business. However, an arrangement exempt from the requirements of this paragraph may not expand the nature of its business beyond that set forth in the articles of incorporation of its sponsoring association as of April 1, 1995, except as authorized in this paragraph.

Section 2. Subsection (1) of section 624.441, Florida Statutes, is amended to read:

624.441 Insolvency protection.—

(1) To assure the faithful performance of its obligations to its employer members ~~member-employers~~ and covered employees and their dependents, every arrangement shall deposit with the department cash, securities of the type eligible for deposit by insurers under s. 625.52, or any combination of these, in an amount equal to 25 percent of the preceding 12 months' health care claims expenditures or 5 percent of gross annual premiums for the succeeding year, whichever is greater, which deposit shall be made within 30 days after the close of each fiscal year; however, in no case shall the amount of the deposit exceed \$500,000.

Section 3. Paragraph (a) of subsection (1) of section 627.654, Florida Statutes, is amended to read:

627.654 Labor union, association, and small employer health alliance groups.—

(1)(a) A bona fide group as defined in s. 624.438(1)(b)4., ~~an~~ ~~or~~ association of employers, ~~as defined in 29 C.F.R. part 2510.3-5,~~ or a group of individuals may be insured under a policy issued to an association, including a labor union, which association has a constitution and bylaws and which has been organized for purposes in addition to that of obtaining insurance, or to the trustees of a fund established by such an association, which association or trustees shall be deemed the policyholder, insuring at least 15 individual members of the association for the benefit of persons other than the officers of the association, the association, or trustees.

Section 4. This act shall take effect upon becoming a law.

Approved by the Governor June 9, 2023.

Filed in Office Secretary of State June 9, 2023.