



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3707

Introduced 2/22/2021, by Rep. Sam Yingling

SYNOPSIS AS INTRODUCED:

215 ILCS 97/5

Amends the Illinois Health Insurance Portability and Accountability Act. Revises the definition of "small employer" to mean an employer who employs an average of at least one but not more than 50 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year (rather than an employer who employs an average of at least 2 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year). Effective immediately.

LRB102 10033 BMS 15353 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Health Insurance Portability and
5 Accountability Act is amended by changing Section 5 as
6 follows:

7 (215 ILCS 97/5)

8 Sec. 5. Definitions.

9 "Affiliate" means a person that directly, or indirectly
10 through one or more intermediaries, controls, is controlled
11 by, or is under common control with the person specified.

12 "Beneficiary" has the meaning given such term under
13 Section 3(8) of the Employee Retirement Income Security Act of
14 1974.

15 "Bona fide association" means, with respect to health
16 insurance coverage offered in a State, an association which:

17 (1) has been actively in existence for at least 5
18 years;

19 (2) has been formed and maintained in good faith for
20 purposes other than obtaining insurance;

21 (3) does not condition membership in the association
22 on any health status-related factor relating to an
23 individual (including an employee of an employer or a

1 dependent of an employee);

2 (4) makes health insurance coverage offered through
3 the association available to all members regardless of any
4 health status-related factor relating to such members (or
5 individuals eligible for coverage through a member);

6 (5) does not make health insurance coverage offered
7 through the association available other than in connection
8 with a member of the association; and

9 (6) meets such additional requirements as may be
10 imposed under State law.

11 "Church plan" has the meaning given that term under
12 Section 3(33) of the Employee Retirement Income Security Act
13 of 1974.

14 "COBRA continuation provision" means any of the following:

15 (1) Section 4980B of the Internal Revenue Code of
16 1986, other than subsection (f)(1) of that Section insofar
17 as it relates to pediatric vaccines.

18 (2) Part 6 of subtitle B of title I of the Employee
19 Retirement Income Security Act of 1974, other than Section
20 609 of that Act.

21 (3) Title XXII of federal Public Health Service Act.

22 "Control" means the possession, direct or indirect, of the
23 power to direct or cause the direction of the management and
24 policies of a person, whether through the ownership of voting
25 securities, the holding of policyholders' proxies by contract
26 other than a commercial contract for goods or non-management

1 services, or otherwise, unless the power is solely the result
2 of an official position with or corporate office held by the
3 person. Control is presumed to exist if any person, directly
4 or indirectly, owns, controls, holds with the power to vote,
5 or holds shareholders' proxies representing 10% or more of the
6 voting securities of any other person or holds or controls
7 sufficient policyholders' proxies to elect the majority of the
8 board of directors of the domestic company. This presumption
9 may be rebutted by a showing made in a manner as the Secretary
10 may provide by rule. The Secretary may determine, after
11 furnishing all persons in interest notice and opportunity to
12 be heard and making specific findings of fact to support such
13 determination, that control exists in fact, notwithstanding
14 the absence of a presumption to that effect.

15 "Department" means the Department of Insurance.

16 "Employee" has the meaning given that term under Section
17 3(6) of the Employee Retirement Income Security Act of 1974.

18 "Employer" has the meaning given that term under Section
19 3(5) of the Employee Retirement Income Security Act of 1974,
20 except that the term shall include only employers of 2 or more
21 employees.

22 "Enrollment date" means, with respect to an individual
23 covered under a group health plan or group health insurance
24 coverage, the date of enrollment of the individual in the plan
25 or coverage, or if earlier, the first day of the waiting period
26 for enrollment.

1 "Federal governmental plan" means a governmental plan
2 established or maintained for its employees by the government
3 of the United States or by any agency or instrumentality of
4 that government.

5 "Governmental plan" has the meaning given that term under
6 Section 3(32) of the Employee Retirement Income Security Act
7 of 1974 and any federal governmental plan.

8 "Group health insurance coverage" means, in connection
9 with a group health plan, health insurance coverage offered in
10 connection with the plan.

11 "Group health plan" means an employee welfare benefit plan
12 (as defined in Section 3(1) of the Employee Retirement Income
13 Security Act of 1974) to the extent that the plan provides
14 medical care (as defined in paragraph (2) of that Section and
15 including items and services paid for as medical care) to
16 employees or their dependents (as defined under the terms of
17 the plan) directly or through insurance, reimbursement, or
18 otherwise.

19 "Health insurance coverage" means benefits consisting of
20 medical care (provided directly, through insurance or
21 reimbursement, or otherwise and including items and services
22 paid for as medical care) under any hospital or medical
23 service policy or certificate, hospital or medical service
24 plan contract, or health maintenance organization contract
25 offered by a health insurance issuer.

26 "Health insurance issuer" means an insurance company,

1 insurance service, or insurance organization (including a
2 health maintenance organization, as defined herein) which is
3 licensed to engage in the business of insurance in a state and
4 which is subject to Illinois law which regulates insurance
5 (within the meaning of Section 514(b)(2) of the Employee
6 Retirement Income Security Act of 1974). The term does not
7 include a group health plan.

8 "Health maintenance organization (HMO)" means:

9 (1) a Federally qualified health maintenance
10 organization (as defined in Section 1301(a) of the Public
11 Health Service Act.);

12 (2) an organization recognized under State law as a
13 health maintenance organization; or

14 (3) a similar organization regulated under State law
15 for solvency in the same manner and to the same extent as
16 such a health maintenance organization.

17 "Individual health insurance coverage" means health
18 insurance coverage offered to individuals in the individual
19 market, but does not include short-term limited duration
20 insurance.

21 "Individual market" means the market for health insurance
22 coverage offered to individuals other than in connection with
23 a group health plan.

24 "Large employer" means, in connection with a group health
25 plan with respect to a calendar year and a plan year, an
26 employer who employed an average of at least 51 employees on

1 business days during the preceding calendar year and who
2 employs at least 2 employees on the first day of the plan year.

3 (1) Application of aggregation rule for large
4 employers. All persons treated as a single employer under
5 subsection (b), (c), (m), or (o) of Section 414 of the
6 Internal Revenue Code of 1986 shall be treated as one
7 employer.

8 (2) Employers not in existence in preceding year. In
9 the case of an employer which was not in existence
10 throughout the preceding calendar year, the determination
11 of whether the employer is a large employer shall be based
12 on the average number of employees that it is reasonably
13 expected the employer will employ on business days in the
14 current calendar year.

15 (3) Predecessors. Any reference in this Act to an
16 employer shall include a reference to any predecessor of
17 such employer.

18 "Large group market" means the health insurance market
19 under which individuals obtain health insurance coverage
20 (directly or through any arrangement) on behalf of themselves
21 (and their dependents) through a group health plan maintained
22 by a large employer.

23 "Late enrollee" means with respect to coverage under a
24 group health plan, a participant or beneficiary who enrolls
25 under the plan other than during:

26 (1) the first period in which the individual is

1 eligible to enroll under the plan; or

2 (2) a special enrollment period under subsection (F)
3 of Section 20.

4 "Medical care" means amounts paid for:

5 (1) the diagnosis, cure, mitigation, treatment, or
6 prevention of disease, or amounts paid for the purpose of
7 affecting any structure or function of the body;

8 (2) amounts paid for transportation primarily for and
9 essential to medical care referred to in item (1); and

10 (3) amounts paid for insurance covering medical care
11 referred to in items (1) and (2).

12 "Nonfederal governmental plan" means a governmental plan
13 that is not a federal governmental plan.

14 "Network plan" means health insurance coverage of a health
15 insurance issuer under which the financing and delivery of
16 medical care (including items and services paid for as medical
17 care) are provided, in whole or in part, through a defined set
18 of providers under contract with the issuer.

19 "Participant" has the meaning given that term under
20 Section 3(7) of the Employee Retirement Income Security Act of
21 1974.

22 "Person" means an individual, a corporation, a
23 partnership, an association, a joint stock company, a trust,
24 an unincorporated organization, any similar entity, or any
25 combination of the foregoing acting in concert, but does not
26 include any securities broker performing no more than the

1 usual and customary broker's function or joint venture
2 partnership exclusively engaged in owning, managing, leasing,
3 or developing real or tangible personal property other than
4 capital stock.

5 "Placement" or being "placed" for adoption, in connection
6 with any placement for adoption of a child with any person,
7 means the assumption and retention by the person of a legal
8 obligation for total or partial support of the child in
9 anticipation of adoption of the child. The child's placement
10 with the person terminates upon the termination of the legal
11 obligation.

12 "Plan sponsor" has the meaning given that term under
13 Section 3(16)(B) of the Employee Retirement Income Security
14 Act of 1974.

15 "Preexisting condition exclusion" means, with respect to
16 coverage, a limitation or exclusion of benefits relating to a
17 condition based on the fact that the condition was present
18 before the date of enrollment for such coverage, whether or
19 not any medical advice, diagnosis, care, or treatment was
20 recommended or received before such date.

21 "Small employer" means, in connection with a group health
22 plan with respect to a calendar year and a plan year, an
23 employer who employed an average of at least one ~~2~~ but not more
24 than 50 employees on business days during the preceding
25 calendar year and who employs at least one employee ~~2~~
26 ~~employees~~ on the first day of the plan year.

1 (1) Application of aggregation rule for small
2 employers. All persons treated as a single employer under
3 subsection (b), (c), (m), or (o) of Section 414 of the
4 Internal Revenue Code of 1986 shall be treated as one
5 employer.

6 (2) Employers not in existence in preceding year. In
7 the case of an employer which was not in existence
8 throughout the preceding calendar year, the determination
9 of whether the employer is a small employer shall be based
10 on the average number of employees that it is reasonably
11 expected the employer will employ on business days in the
12 current calendar year.

13 (3) Predecessors. Any reference in this Act to a small
14 employer shall include a reference to any predecessor of
15 that employer.

16 "Small group market" means the health insurance market
17 under which individuals obtain health insurance coverage
18 (directly or through any arrangement) on behalf of themselves
19 (and their dependents) through a group health plan maintained
20 by a small employer.

21 "State" means each of the several States, the District of
22 Columbia, Puerto Rico, the Virgin Islands, Guam, American
23 Samoa, and the Northern Mariana Islands.

24 "Waiting period" means with respect to a group health plan
25 and an individual who is a potential participant or
26 beneficiary in the plan, the period of time that must pass with

1 respect to the individual before the individual is eligible to
2 be covered for benefits under the terms of the plan.

3 (Source: P.A. 94-502, eff. 8-8-05.)

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.