

Part A. Group Market Reforms.

Subpart 1. Portability, Access, and Renewability Requirements.

**§ 58-68-25. Definitions; excepted benefits; employer size rule.**

(a) Definitions. – In addition to other definitions throughout this Article, the following definitions and their cognates apply in this Article:

- (1) "Bona fide association". – With respect to health insurance coverage offered in this State, an association that:
  - a. Has been actively in existence for at least five years.
  - b. Has been formed and maintained in good faith for purposes other than obtaining insurance.
  - c. Does not condition membership in the association on any health status-related factor relating to an individual (including an employee of an employer or a dependent of an employee).
  - d. Makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to the members (or individuals eligible for coverage through a member).
  - e. Does not make health insurance coverage offered through the association available other than in connection with a member of the association.
  - f. Meets the additional requirements as may be imposed under State law.
- (2) "COBRA continuation provision". – Any of the following:
  - a. Section 4980B of the Internal Revenue Code of 1986, other than subdivision (f)(1) of the section insofar as it relates to pediatric vaccines.
  - b. Part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, other than section 609 of the Act.
  - c. Title XXII of the Public Health Service Act (42 U.S.C.S. § 300bb, et seq.) as requirements for certain group health plans for certain State and local employees.
  - d. Article 53 of this Chapter or the health insurance continuation law of another state.
- (3) "Employee". – The meaning given the term under section 3(6) of the Employee Retirement Income Security Act of 1974.
- (4) "Employer". – The meaning given the term under section 3(5) of the Employee Retirement Income Security Act of 1974, except that the term shall include only employers of two or more employees.
- (4a) "Group health insurance coverage". – Health insurance coverage offered in connection with a group health plan.
- (4b) "Group health plan". – The meaning given the term under 45 C.F.R. § 146.145(a).
- (4c) "Group market." – The market for health insurance coverage offered in connection with a group health plan.
- (5) "Health insurance coverage" or "coverage" or "health insurance plan" or "plan". – Benefits consisting of medical care, provided directly through insurance or otherwise and including items and services paid for as medical care, under any accident and health insurance policy or certificate, hospital or medical service plan contract, or health maintenance organization contract, written by a health insurer. Health insurance coverage includes group health insurance coverage and individual health insurance coverage.

- (6) "Health insurer". – An insurance company subject to this Chapter, a hospital or medical service corporation subject to Article 65 of this Chapter, a health maintenance organization subject to Article 67 of this Chapter, or a multiple employer welfare arrangement subject to Article 50A of this Chapter, that offers and issues health insurance coverage.
- (7) "Health status-related factor". – Any of the factors described in G.S. 58-68-35(a)(1).
- (8) "Individual health insurance coverage". – Health insurance coverage offered to individuals in the individual market, but not short-term limited duration insurance.
- (9) "Individual market". – The market for health insurance coverage offered to individuals.
- (10) "Large employer". – An employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the health insurance plan year.
- (11) "Large group market". – The health insurance market under which individuals obtain health insurance coverage, directly or through any arrangement, on behalf of themselves and their dependents through a group health insurance plan maintained by a large employer.
- (12) "Medical care". – Amounts paid for:
  - a. The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body.
  - b. Amounts paid for transportation primarily for and essential to medical care referred to in sub-subdivision a. of this subdivision.
  - c. Amounts paid for insurance covering medical care referred to in sub-subdivisions a. and b. of this subdivision.
- (13) "Network plan". – Health insurance coverage of a health insurer under which the financing and delivery of medical care (including items and services paid for as medical care) are provided, in whole or in part, through a defined set of health care providers under contract with the health insurer.
- (14) "Participant". – The meaning given the term under section 3(7) of the Employee Retirement Income Security Act of 1974.
- (15) "Placed for adoption". – The assumption and retention by a person of a legal obligation for total or partial support of a child in anticipation of adoption of the child. The child's placement with the person terminates upon the termination of the legal obligation.
- (16) "Small employer". – The meaning given to the term in G.S. 58-50-110(22).
- (17) "Small group market". – The health insurance market under which individuals obtain health insurance coverage, directly or through any arrangement, on behalf of themselves and their dependents through a group health insurance plan maintained by a small employer.

(b) Excepted Benefits. – Excepted benefits are not subject to requirements under this Chapter regarding coverage of a specific person, provider, treatment, service, condition, or disease unless that coverage is expressly required by law. For the purposes of this Article, "excepted benefits" means benefits under one or more or any combination of the following:

- (1) Benefits not subject to requirements. –
  - a. Coverage only for accident or disability income insurance or any combination of these.

- b. Coverage issued as a supplement to liability insurance.
  - c. Liability insurance, including general liability insurance and automobile liability insurance.
  - d. Workers' compensation or similar insurance.
  - e. Automobile medical payment insurance.
  - f. Credit-only insurance.
  - g. Coverage for on-site medical clinics.
  - h. Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.
  - i. Short-term limited-duration health insurance policies as defined in Part 144 of Title 45 of the Code of Federal Regulations.
- (2) Benefits not subject to requirements if offered separately. –
- a. Limited scope dental or vision benefits.
  - b. Benefits for long-term care, nursing care, home health care, community-based care, or any combination of these.
  - c. The other similar, limited benefits as are specified in federal regulations.
- (3) Benefits not subject to requirements if offered as independent, noncoordinated benefits. –
- a. Coverage only for a specified disease or illness.
  - b. Hospital indemnity or other fixed indemnity insurance.
- (4) Benefits not subject to requirements if offered as separate insurance policy. – Medicare supplemental health insurance (as defined under section 1882(g)(1) of the Social Security Act), coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code, and similar supplemental coverage provided to coverage under a group health insurance plan.
- (c) Application of certain rules in determination of employer size. –  
 For the purposes of this Article:
- (1) Application of aggregation rule for employers. – All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as one employer.
  - (2) Employers not in existence in preceding year. – In the case of an employer that was not in existence throughout the preceding calendar year, the determination of whether the employer is a small or large employer shall be based on the average number of employees that it is reasonably expected the employer will employ on business days in the current calendar year.
  - (3) Predecessors. – Any reference in this subsection to an employer shall include a reference to any predecessor of the employer. (1997-259, s. 1(c); 2002-187, s. 5.1; 2009-382, ss. 2, 3; 2018-120, s. 4.11; 2019-202, s. 8.)