

**TITLE 365. INSURANCE DEPARTMENT
CHAPTER 10. LIFE, ACCIDENT AND HEALTH
SUBCHAPTER 5. MINIMUM STANDARDS; CONTRACT GUIDELINES**

PART 15. SMALL EMPLOYER HEALTH INSURANCE REFORM REGULATION

365:10-5-150. Statement of purpose

(a) This Part is intended to implement the provisions of the Small Employer Health Insurance Reform Act. The general purposes of the Act and this Part are to provide for the availability of health insurance coverage to small employers, regardless of their health status or claims experience; to regulate insurer rating practices and establish limits on differences in rates between health benefit plans; to ensure renewability of coverage; to establish limitations on underwriting practices, eligibility requirements and the use of preexisting condition exclusions; to provide for development of "basic" and "standard" health insurance plans to be offered to all small employers; to direct the basis of market competition away from risk selection and toward the efficient management of health care; and to improve the overall fairness and efficiency of the small group health insurance market.

(b) The Act and this Part are intended to promote broader spreading of risk in the small employer marketplace. The Act and Part are intended to regulate all health benefit plans sold to small employers, whether sold directly or through associations or other groupings of small employers. Carriers that provide health benefit plans to small employers are intended to be subject to all of the provisions of the Act and this Part.

[Source: Added at 12 Ok Reg 3137, eff 7-31-95; Amended at 29 Ok Reg 1258, eff 7-14-12]

365:10-5-151. Definitions

The following words or terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Small Employer Health Insurance Reform Act, 36 O.S.Supp.1994, §6511 et seq.

"Associate member of an employee organization" means any individual who participates in an employee benefit plan [as defined in 29 U.S.C. §1002(1)] that is a multi-employer plan [as defined in 29 U.S.C. §1002(37A)], other than the following:

(A) An individual or the beneficiary of such individual who is employed by a participating employer within a bargaining unit covered by at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained;
or

(B) An individual who is a present or former employee (or a beneficiary of such employee) of the sponsoring employee organization, of an employer who is or was a party to at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained, or of the employee benefit plan (or of a related plan).

"New entrant" means an eligible employee, or the dependent of an eligible employee, who becomes part of an employer group after the initial period for enrollment in a health benefit plan.

"Risk characteristic" means the health status, claims experience, duration of coverage, or any similar characteristic related to the health status or experience of a small employer group or of any member of a small employer group.

"Risk load" means the percentage above the applicable base premium rate that is charged by a small employer carrier to a small employer to reflect the risk characteristics of the small employer group.

[Source: Added at 12 Ok Reg 3137, eff 7-31-95]

365:10-5-152. Applicability and scope

(a) Exceptions.

(1) Except as provided in 365:10-5-163(A)(2), this Part shall apply to any health benefit plan, whether provided on a group or individual basis, which:

(A) Meets one or more of the conditions set forth in 36 O.S.Supp.1994, §6513(A), (B)(1) and (B)(2), of the Act;

(B) Provides coverage to employees of a small employer located in this state as set forth in 36 O.S.Supp.1994, §6513(A), without regard to whether the policy or certificate was issued in this state; and

(C) Is in effect on or after the effective date of the Act.

(2) The provisions of the Act and this Part shall not apply to an individual health benefit plan delivered or issued for delivery prior to the effective date of the Act.

(b) Applicability to carriers that provide individual health benefit plans.

(1) A carrier that provides individual health benefit plans to three (3) or more of the employees of a small employer shall be considered a small employer carrier and shall be subject to the provisions of the Act and this Part with respect to such policies if the small employer contributes directly or indirectly to the premiums for the policies and the carrier is aware or should have been aware of such contribution.

(2) In the case of a carrier that provides individual health benefit plans to three (3) or more employees of a small employer, the small employer shall be considered to be an eligible small employer as defined in 36 O.S.Supp.1994, §6512(28), and the small employer carrier shall be subject to 36 O.S.Supp.1994, §6519(A)(1) (relating to guaranteed issue of coverage), if:

(A) The small employer has at least three (3) employees;

(B) The small employer contributes directly or indirectly to the premiums charged by the carrier; and

(C) The carrier is aware or should have been aware of the contribution by the employer.

(c) The provisions of the Act and this Part shall apply to a health benefit plan provided to a small employer or to the employees of a small employer pursuant to 36 O.S.Supp.1994, §6513(A), without regard to whether the health benefit plan is offered under or provided through a group policy or trust arrangement for any eligible employer with two (2) to fifty (50) employees sponsored by an association or discretionary group regardless of the size of the association or discretionary group.

(d) An individual health benefit plan shall not be subject to the provisions of the Act and this Part solely because the policyholder elects a deduction under Section 162(l) of the Internal Revenue Code.

(e) Continuation of coverage and notification requirement.

(1) If a small employer is issued a health benefit plan under the terms of the Act, the provisions of the Act and this Part shall continue to apply to the health benefit plan in the case that the small employer subsequently employs more than fifty (50) eligible employees. A

carrier providing coverage to such an employer shall, within sixty (60) days of becoming aware that the employer has more than fifty (50) eligible employees but no later than the anniversary date of the employer's health benefit plan, notify the employer that the protections provided under the Act and this Part shall cease to apply to the employer if such employer fails to renew its current health benefit plan or elects to enroll in a different health benefit plan.

(2) Plans issued to a non-small employer that subsequently becomes a small employer and requirements.

(A) If a health benefit plan is issued to an employer that is not a small employer as defined in the Act, but subsequently the employer becomes a small employer due to the loss or change of work status of one or more employees, the terms of the Act shall not apply to the health benefit plan. The carrier providing a health benefit plan to such an employer shall not become a small employer carrier under the terms of the Act solely because the carrier continues to provide coverage under the health benefit plan to the employer.

(B) A carrier providing coverage to an employer described in 365:10-5-152(e)(2)(A) shall, within sixty (60) days of becoming aware that the employer has fifty (50) or fewer eligible employees, notify the employer of the options and protections available to the employer under the Act, including the employer's option to purchase a small employer health benefit plan from any small employer carrier.

(f) Employers with employees in more than one state.

(1) Application.

(A) If a small employer has employees in more than one state, the provisions of the Act and this Part shall apply to a health benefit plan issued to the small employer if:

(i) The majority of eligible employees of such small employer are employed in this state; or

(ii) If no state contains a majority of the eligible employees of the small employer, the primary business location of the small employer is in this state.

(B) In determining whether the laws of this state or another state apply to a health benefit plan issued to a small employer described in 365:10-5-152(f)(1)(A), the provisions of the paragraph shall be applied as of the date the health benefit plan was issued to the small employer for the period that the health benefit plan remains in effect.

(2) If a health benefit plan is subject to the Act and this Part, the provisions of the Act and this Part shall apply to all individuals covered under the health benefit plan, whether they reside in this state or in another state.

(g) A carrier that is not operating as a small employer carrier in this state shall not become subject to the provisions of the Act and this Part solely because a small employer that was issued a health benefit plan in another state by that carrier moves to this state.

[Source: Added at 12 Ok Reg 3137, eff 7-31-95]

365:10-5-153. Establishment of classes of business

(a) A small employer carrier that establishes more than one class of business pursuant to the provisions of 36 O.S.Supp.1994, §6514, shall maintain on file for inspection by the Commissioner the following information with respect to each class of business so established:

(1) A description of each criterion employed by the carrier (or any of its agents) for determining membership in the class of business;

(2) A statement describing the justification for establishing the class as a separate class of business and documentation that the establishment of the class of business is intended to reflect substantial differences in expected claims experience or administrative costs related to the reasons set forth in 36 O.S.Supp.1994, §6514; and

(3) A statement disclosing which, if any, health benefit plans are currently available for purchase in the class and any significant limitations related to the purchase of such plans.

(b) A carrier may not directly or indirectly use group size as a criterion for establishing eligibility for a health benefit plan or for a class of business.

[Source: Added at 12 Ok Reg 3137, eff 7-31-95]

365:10-5-154. Transaction for assumptions of business from another carrier

(a) Requirements for transfer or assumption of business.

(1) A small employer carrier shall not transfer or assume the entire insurance obligation and/or risk of a health benefit plan covering a small employer in this state unless:

(A) The transaction has been approved by the Commissioner of the state of domicile of the assuming carrier;

(B) The transaction has been approved by the Commissioner of the state of domicile of the ceding carrier; and

(C) The transaction otherwise meets the requirements of 365:10-5-154.

(2) A carrier domiciled in this state that proposes to assume or cede the entire insurance obligation and/or risk of one or

more small employer health benefit plans from another carrier shall make a filing for approval with the Commissioner at least sixty (60) days prior to the date of the proposed assumption. The Commissioner may approve the transaction if the Commissioner finds that the transaction is in the best interests of the individuals insured under the health benefit plans to be transferred and is consistent with the purposes of the Act and this Part. The Commissioner shall not approve the transaction until at least thirty (30) days after the date of the filing; except that, if the ceding carrier is in hazardous financial condition, the Commissioner may approve the transaction as soon as the Commissioner deems reasonable after the filing.

(3) Filing contents requirement.

(A) The filing required under 365:10-5-154(a)(2) shall:

(i) Describe the class of business (including any eligibility requirements) of the ceding carrier from which the health benefit plans will be ceded;

(ii) Describe whether the assuming carrier will maintain the assumed health benefit plans as a separate class of business pursuant to 365:10-5-154(c) or will incorporate them into an existing class of business pursuant to 365:10-5-154(d). If the assumed health benefit plans will be incorporated into an existing class of

business, the filing shall describe the class of business of the assuming carrier into which the health benefit plans will be incorporated;

(iii) Describe whether the health benefits plans being assumed are currently available for purchase by small employers;

(iv) Describe the potential effect of the assumption, if any, on the benefits provided by the health benefit plans to be assumed;

(v) Describe the potential effect of the assumption, if any, on the premiums for the health benefit plans to be assumed;

(vi) Describe any other potential material effects of the assumption on the coverage provided to the small employers covered by the health benefit plans to be assumed; and

(vii) Include any other information required by the Commissioner.

(B) A small employer carrier required to make a filing under 365:10-5-154(a)(2) shall also make an informational filing with the Commissioner of each state in which there are small employer health benefit plans that would be included in the transaction. The informational filing to each state shall be made concurrently with the filing made under 365:10-5-154(a)(2) and shall include at least the information specified in 365:10-5-154(a)(2)(A) for the small employer health benefit plans in that state.

(4) A small employer carrier shall not transfer or assume the entire insurance obligation and/or risk of a health benefit plan covering a small employer in this state unless it complies with the following provisions:

(A) The carrier has provided notice to the Commissioner at least sixty (60) days prior to the date of the proposed assumption. The notice shall contain the information specified in 365:10-5-154(3) for the health benefit plans covering small employers in this state.

(B) If the assumption of a class of business would result in the assuming small employer carrier being out of compliance with the limitations related to premium rates contained in 36 O.S.Supp.1994, §6515(A)(1), the assuming carrier shall make a filing with the Commissioner pursuant to 36 O.S.Supp.1994, §6519(C)(1), seeking suspension of the application of 36 O.S.Supp.1994, §6515(A)(1).

(C) An assuming carrier seeking suspension of the application of 36 O.S.Supp.1994, §6515(A)(1), shall not complete the assumption of health benefit plans covering small employers in this state unless the Commissioner grants the suspension requested pursuant to 365:10-5-154(a)(4)(B).

(D) Unless a different period is approved by the Commissioner, a suspension of the application of 36 O.S.Supp.1994, §6515(A)(1), shall, with respect to an assumed class of business, be for no more than fifteen (15) months and, with respect to each individual small employer, shall last only until the anniversary date of such employer's coverage, except that the period with respect to an individual small employer may be extended beyond its first anniversary date for a period of up to twelve (12) months if the anniversary date occurs within three (3) months of the date of assumption of the class of business.

(b) Entire class must be ceded; exceptions.

(1) Except as provided in 365:10-5-154(b)(2), a small employer carrier shall not cede or assume the entire insurance obligation and/or risk for a small employer health benefit plan

unless the transaction includes the ceding to the assuming carrier of the entire class of business which includes such health benefit plan.

(2) A small employer carrier may cede less than an entire class of business to an assuming carrier if:

(A) One or more small employers in the class have exercised their right under contract or state law to reject, either directly or by implication, the ceding of their health benefit plans to another carrier. In that instance, the transaction shall include each health benefit plan in the class of business except those health benefit plans for which a small employer has rejected the proposed cession; or

(B) After a written request from the transferring carrier, the Commissioner determines that the transfer of less than the entire class of business is in the best interests of the small employers insured in that class of business.

(c) Except as provided in 365:10-5-154(d), a small employer carrier that assumes one or more health benefit plans from another carrier shall maintain such health benefit plans as a separate class of business.

(d) A small employer carrier that assumes one or more health benefit plans from another carrier may exceed the limitation contained in 36 O.S.Supp.1994, §6514(B) (relating to the maximum number of classes of business a carrier may establish), due solely to such assumption for a period of up to fifteen (15) months after the date of the assumption, provided that the carrier complies with the following provisions:

(1) Upon assumption of the health benefit plans, such health benefit plans shall be maintained as a separate class of business. During the fifteen-month period following the assumption, each of the assumed small employer health benefit plans shall be transferred by the assuming small employer carrier into a single class of business operated by the assuming small employer carrier. The assuming small employer carrier shall select the class of business into which the assumed health benefit plans will be transferred in a manner such that the transfer results in the least possible change to the benefits and rating method of the assumed health benefit plans.

(2) The transfers authorized in 365:10-5-154(d)(1) shall occur with respect to each small employer on the anniversary date of the small employer's coverage, except that the period with respect to an individual small employer may be extended beyond its first anniversary date for a period of up to twelve (12) months if the anniversary date occurs within three (3) months of the date of assumption of the class of business.

(3) A small employer carrier making a transfer pursuant to 365:10-5-154(d)(1) may alter the benefits of the assumed health benefit plans to conform to the benefits currently offered by the carrier in the class of business into which the health benefit plans have been transferred.

(4) The premium rate for an assumed small employer health benefit plan shall not be modified by the assuming small employer carrier until the health benefit plan is transferred pursuant to 365:10-5-154(d)(1). Upon transfer, the assuming small employer carrier shall calculate a new premium rate for the health benefit plan from the rate manual established for the class of business into which the health benefit plan is transferred. In making such calculation, the risk load applied to the health benefit plan shall be no higher than the risk load applicable to such health benefit plan prior to the assumption.

(5) During the fifteen-month period provided in 365:10-5-154(d)(1), the transfer of small employer health benefit plans from the assumed class of business in accordance with 365:10-

5-154(d)(1) shall not be considered a violation of the first sentence of 36 O.S.Supp.1994, §6515(B).

(e) An assuming carrier may not apply eligibility requirements, including minimum participation and contribution requirements, with respect to an assumed health benefit plan (or with respect to any health benefit plan subsequently offered to a small employer covered by such an assumed health benefit plan) that are more stringent than the requirements applicable to such health benefit plan prior to the assumption.

(f) The Commissioner may approve a longer period of transition upon application of a small employer carrier. The application shall be made within sixty (60) days after the date of assumption of the class of business and shall clearly state the justification for a longer transition period.

(g) Nothing in 365:10-5-154 or in the Act is intended to:

(1) Reduce or diminish any legal or contractual obligation or requirement, including any obligation provided in 365:25-7-50 to 53, of the ceding or assuming carrier related to the transaction;

(2) Authorize a carrier that is not admitted to transact the business of insurance in this state to offer or insure health benefit plans in this state; or

(3) Reduce or diminish the protections related to an assumption reinsurance transaction provided in 365:25-7-50 to 53 or otherwise provided by law.

[Source: Added at 12 Ok Reg 3137, eff 7-31-95]

365:10-5-155. Restrictions relating to premium rates

(a) Separate rate manuals required.

(1) A small employer carrier shall develop a separate rate manual for each class of business. Base premium rates and new business premium rates charged to small employers by the small employer carrier shall be computed solely from the applicable rate manual developed pursuant to 365:10-5-155(a). To the extent that a portion of the premium rates charged by a small employer carrier is based on the carrier's discretion, the manual shall specify the criteria and factors considered by the carrier in exercising such discretion.

(2) Modification of rating method requirements.

(A) A small employer carrier shall not modify the rating method used in the rate manual for a class of business until the change has been approved as provided in 365:10-5-155(a)(2). The Commissioner may approve a change to a rating method if the Commissioner finds that the change is reasonable, actuarially appropriate, and consistent with the purposes of the Act and this Part.

(B) A carrier may modify the rating method for a class of business only with prior approval of the Commissioner. A carrier requesting to change the rating method for a class of business shall make a filing with the Commissioner at least thirty (30) days prior or the proposed date of the change. The filing shall contain at least the following information:

(i) The reasons the change in rating method is being requested;

(ii) A complete description of each of the proposed modifications to the rating method;

(iii) A description of how the change in rating method would affect the premium rates currently charged to small employers in the class of business, including an estimate from a qualified actuary of the number of groups or individuals (and a description of the types of groups or individuals) whose premium rates may change by more than ten percent (10%) due to the proposed change in rating method (not generally including increases in premium rates applicable to all small employers in a health benefit plan);

(iv) A certification from a qualified actuary that the new rating method would be based on objective and credible data and would be actuarially sound and appropriate; and

(v) A certification from a qualified actuary that the proposed change in rating method would not produce premium rates for small employers that would be in violation of 36 O.S.Supp.1994, §6515.

(C) For the purpose of 365:10-5-155 a change in rating method shall mean:

(i) A change in the number of case characteristics used by a small employer carrier to determine premium rates for health benefit plans in a class of business;

(ii) A change in the manner or procedures by which insureds are assigned into categories for the purpose of applying a case characteristic to determine premium rates for health benefit plans in a class of business;

(iii) A change in the method of allocating expenses among health benefit plans in a class of business; or

(iv) A **"ten percent charge in premium" test.**

(I) A change in rating factor with respect to any case characteristic if the change would produce a change in premium for any small employer that exceeds ten percent (10%).

(II) For the purpose of 365:10-5-155 (a)(2)(C)(iv)(I), a change in a rating factor considered over a twelve (12) month period. If a small employer carrier changes rating factors with respect to more than one case characteristic in a twelve (12) month period, the carrier shall consider the cumulative effect of all such changes in applying the ten percent (10%) test under 365:10-5-155(a)(2)(C)(iv)(I).

(b) **Case characteristics and rate factors.**

(1) The rate manual developed pursuant to 365:10-5-155(a) shall specify the case characteristics and rate factors to be applied by the small employer carrier in establishing premium rates for the class of business.

(2) A small employer carrier may not use case characteristics other than age, gender, industry, geographic area, and family composition, as specified in 36 O.S.Supp.1994, §6512(7), without the prior approval of the Commissioner. A small employer carrier seeking such an approval shall make a filing with the Commissioner for a change in rating method under 365:10-5-155(a)(2).

(3) A small employer carrier shall use the same case characteristics in establishing premium rates for each health benefit plan in a class of business and shall apply them in the same manner in establishing premium rates for each such health benefit plan. Case characteristics shall be applied without regard to the risk characteristics of a small employer.

- (4) The rate manual developed pursuant to 365:10-5-155(a) shall clearly illustrate the relationship among the base premium rates charged for each health benefit plan in the class of business. If the new business premium rate is different than the base premium rate for a health benefit plan, the rate manual shall illustrate the difference.
- (5) Differences among base premium rates for health benefit plans shall be based solely upon the reasonable and objective differences in the design and benefits of the health benefit plans and shall not be based in any way on the actual or expected health status or claims experience of the small employer groups that choose or are expected to choose a particular health benefit plan. A small employer carrier shall apply case characteristics and rate factors within a class of business in a manner that assures that premium differences among health benefit plans for identical small employer groups vary only due to reasonable and objective differences in the design and benefits of the health benefit plans and are not due to the actual or expected health status or claims experience of the small employer groups that choose or are expected to choose a particular health benefit plan.
- (6) The rate manual developed pursuant to 365:10-5-155(a) shall provide for premium rates to be developed in a two step process. In the first step, a base premium rate shall be developed for the small employer group without regard to any risk characteristics of the group. In the second step, the resulting base premium rate may be adjusted by a risk load, subject to the provisions of 36 O.S.Supp.1994, §6515, to reflect the risk characteristics of the group.
- (7) A premium charged to a small employer for a health benefit plan shall not include a separate application fee, underwriting fee, or any other separate fee or charge.
- (8) A small employer carrier shall allocate administrative expenses to the basic and standard health benefit plans on no less favorable of a basis than expenses are allocated to other health benefit plans in the class of business. The rate manual developed pursuant to 365:10-5-155(a) shall describe the method of allocating administrative expenses to the health benefit plans in the class of business for which the manual was developed.
- (9) Each rate manual developed pursuant to 365:10-5-155(a) shall be maintained by the carrier for a period of six (6) years. Updates and changes to the manual shall be maintained with the manual.
- (10) The rate manual and rating practices of a small employer carrier shall comply with any guidelines issued by the Commissioner.
- (c) The restrictions related to changes in premium rates in 36 O.S.Supp.1994, §6515(A)(3) and (7), shall be applied as follows:
- (1) A small employer carrier shall revise its rate manual each rating period to reflect changes in base premium rates and changes in new business premium rates.
 - (2) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate is less than or the same as the percentage change in the base premium rate, the change in the new business premium rate shall be deemed to be the change in the base premium rate for the purposes of 36 O.S.Supp.1994, §6515(A)(3)(c) and 36 O.S.Supp.1994, §6515(A)(7)(a).
 - (3) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate exceeds the percentage change in the base premium rate, the health benefit plan shall be considered a health benefit plan into which the small employer

carrier is no longer enrolling new small employers for the purposes of 36 O.S.Supp.1994, §6515(A)(3)(c) and 36 O.S.Supp.1994, §6515(A)(7)(a).

(4) If, for any rating period, the change in the new business premium rate for a health benefit plan differs from the change in the new business premium rate for any other health benefit plan in the same class of business by more than twenty percent (20%), the carrier shall make a filing with the Commissioner containing a complete explanation of how the respective changes in new business premium rates were established and the reason for the difference. The filing shall be made within thirty (30) days of the beginning of the rating period.

(5) A small employer carrier shall keep on file for a period of at least six (6) years the calculations used to determine the change in base premium rates and new business premium rates for each health benefit plan for each rating period.

(d) Revised premium rate.

(1) Except as provided in 365:10-5-155(e)(2) thru (4), a change in premium rate that is no more than the following:

(A) The base premium rate for the small employer (as shown in the rate manual as revised for the rating period), multiplied by

(B) One plus the sum of:

(i) The risk load applicable to the small employer during the previous rating period, and

(ii) Fifteen percent (15%) (prorated for periods of less than one year).

(2) In the case of a health benefit plan into which a small employer carrier is no longer enrolling new small employers, a change in premium rate for a small employer shall produce a revised premium rate that is no more than the following:

(A) The base premium rate for the small employer given its present composition and as shown in the rate manual in effect for the small employer at the beginning of the previous rating period, multiplied by

(B) One plus the lesser of:

(i) The change in the base rate or

(ii) The percentage change in the new business premium for the most similar health benefit plan into which the small employer carrier is enrolling new small employers, multiplied by

(C) One plus the sum of:

(i) The risk load applicable to the small employer during the previous rating period and

(ii) Fifteen percent (15%) (prorated for periods of less than one year).

(3) In the case of a health benefit plan described in 36 O.S.Supp.1994, §6515(A)(6), if the current premium rate for the health benefit plan exceeds the ranges set forth in 36 O.S.Supp.1994, §6515(A), the formulae set forth in 365:10-5-155(e)(1) and (2) will be applied as if the fifteen percent (15%) adjustment provided in 365:10-5-155(e)(1)(B)(ii) and 365:10-5-155(e)(2)(C)(ii) were a zero percent adjustment.

(4) Notwithstanding the provisions of 365:10-5-155(e)(1) and (2), a change in premium rate for a small employer shall not produce a revised premium rate that would exceed the limitations on rates provided in 36 O.S.Supp.1994, §6515(A)(2).

(e) Taft-Hartley trust waiver request.

(1) A representative of a Taft-Hartley trust (including a carrier upon the written request of such a trust) may file in writing with the Commissioner a request for the waiver of application of the provisions of 36 O.S.Supp.1994, §6515(A), with respect to such trust.

(2) A request made under 365:10-5-155(f)(1) shall identify the provisions for which the trust is seeking the waiver and shall describe, with respect to each provision, the extent to which application of such provision would:

(A) Adversely affect the participants and beneficiaries of the trust; and

(B) Require modifications to one or more of the collective bargaining agreements under or pursuant to which the trust was or is established or maintained.

[Source: Added at 12 Ok Reg 3137, eff 7-31-95; Amended at 29 Ok Reg 1259, eff 7-14-12]

365:10-5-156. Requirement to insure entire groups

(a) Offer and option requirements.

(1) A small employer carrier that offers coverage to a small employer shall offer to provide coverage to each eligible employee and to each dependent of an eligible employee. Except as provided in Paragraph (2), the small employer carrier shall provide the same health benefit plan to each such employee and dependent.

(2) A small employer carrier may offer the employees of a small employer the option of choosing among one or more health benefit plans, provided that each employee may choose any of the offered plans. Except as provided in 36 O.S.Supp.1994, §6519(C) (exclusions for preexisting conditions), the choice among benefit plans may not be limited, restricted or conditioned based upon the risk characteristics of the employees or their dependents.

(b) Employee list requirement.

(1) A small employer carrier shall require each small employer that applies for coverage, as part of the application process, to provide a complete list of eligible employees and dependents of eligible employees as defined in 36 O.S.Supp.1994, §6512(14) & (15). The small employer carrier shall require the small employer to provide appropriate supporting documentation (such as the W-2 Summary Wage and Tax Form) to verify the information required under 365:10-5-156(b)(1).

(2) A small employer carrier shall secure a waiver with respect to each eligible employee and each dependent of such an eligible employee who declines an offer of coverage under a health benefit plan provided to a small employer. The waiver shall be signed by the eligible employee (on behalf of such employee or the dependent of such employee) and shall certify that the individual who declined coverage was informed of the availability of coverage under the health benefit plan. The waiver form shall require that the reason for declining coverage be stated on the form and shall include a written warning of the penalties imposed on late enrollees. Waivers shall be maintained by the small employer carrier for a period of six (6) years.

(3) A small employer carrier shall not issue coverage to a small employer that refuses to provide the list required under 365:10-5-156(b)(1) or a waiver required under 365:10-5-156(b)(2).

(4) **Inducement or pressure prohibited.**

(A) A small employer carrier shall not issue coverage to a small employer if the carrier, or a producer for such carrier, has reason to believe that the small employer has induced or pressured an eligible employee or dependent of an eligible employee to decline coverage due to the individual's risk characteristics.

(B) A producer shall notify a small employer carrier, prior to submitting an application for coverage with the carrier on behalf of a small employer, of any circumstances that would indicate that the small employer has induced or pressured an eligible employee or dependent of an eligible employee to decline coverage due to the individual's risk characteristics.

[Source: Added at 12 Ok Reg 3137, eff 7-31-95]

365:10-5-157. Consideration of industry

(a) Except as provided in Subsections (b) and (c), a small employer carrier may not consider the trade or occupation of the employees of a small employer or the industry or type of business in which the small employer is engaged in determining whether to issue or continue to provide coverage to the small employer.

(b) A small employer carrier may use industry as a case characteristic in establishing premium rates, subject to 36 O.S.Supp.1994, §6515(A)(6).

(c) A small employer carrier may consider trade, occupation or industry as part of the eligibility criteria for a class of business, subject to 36 O.S.Supp.1994, §6519(A)(2)(b).

[Source: Added at 12 Ok Reg 3137, eff 7-31-95]

365:10-5-158. Application to reenter state

(a) A carrier that has been prohibited from writing coverage for small employers in this state for five (5) years pursuant to 36 O.S.Supp.1994, §6516(B), may not resume offering health benefit plans to small employers in this state until the carrier has made a petition to the Commissioner to be reinstated as a small employer carrier and the petition has been approved by the Commissioner. In reviewing a petition, the Commissioner may ask for such information and assurances as the Commissioner finds reasonable and appropriate.

(b) In the case of a small employer carrier doing business in only one established geographical service area of the state, if the small employer carrier elects to nonrenew a health benefit plan under 36 O.S.Supp.1994, §6516(A)(6), the small employer carrier shall be prohibited from offering health benefit plans to small employers in any part of the service area for a period of five (5) years. In addition, the small employer carrier shall not offer health benefit plans to small employers in any other geographic area of the state without the prior approval of the Commissioner. In considering whether to grant approval, the Commissioner may ask for such information and assurances as the Commissioner finds reasonable and appropriate.

[Source: Added at 12 Ok Reg 3137, eff 7-31-95]

365:10-5-159. Qualifying previous and qualifying existing coverage

(a) In determining whether a health benefit plan or other health benefit arrangement (public or private) shall be considered qualifying previous coverage or qualifying existing coverage for the purposes of 36 O.S.Supp.1994, §6512(23) and 36 O.S.Supp.1994, §6519(C)(3)(c), a small employer carrier shall interpret the Act no less favorably to an insured individual than the following:

(1) A health benefit plan, policy, certificate or other health benefit arrangement shall be considered employer-based if an employer sponsors the plan or arrangement or makes a contribution to the plan or arrangement.

(2) Similar or exceeding determination.

(A) A health benefit plan, policy, certificate or other benefit arrangement shall be considered to provide benefits similar to or exceeding the benefits provided under the basic health benefit plan if the policy, certificate or other benefit arrangement provides benefits that:

- (i) Have an actuarial value (as considered for a normal distribution of groups) that is not substantially less than the actuarial value of the basic health benefit plan; or
- (ii) Provides coverage for hospitalization and physician services that is substantially similar to or exceeds the coverage for such services in the basic health benefit plan.

(B) In making a determination under 365:10-5-159(a), a small employer carrier shall evaluate the previous or existing policy, certificate or other benefit arrangement taken as a whole and shall not base its decision solely on the fact that one portion of the previous or existing policy, certificate or benefit arrangement provides less coverage than the comparable portion of the basic health benefit plan.

(b) An individual will be considered to have qualifying previous coverage with respect to a particular service if the previous policy, certificate or other benefit arrangement covering such individual met the definition of qualifying previous coverage contained in 36 O.S.Supp.1994, §6512(23), and provided any benefit with respect to the service.

(c) A small employer carrier shall ascertain the source of previous or existing coverage of each eligible employee and each dependent of an eligible employee at the time such employee or dependent initially enrolls into the health benefit plan provided by the small employer carrier. The small employer carrier shall have the responsibility to contact the source of such previous or existing coverage to resolve any questions about the benefits or limitations related to such previous or existing coverage.

[Source: Added at 12 Ok Reg 3137, eff 7-31-95]

365:10-5-160. Restrictive riders

A restrictive rider, endorsement or other provision that would violate the provisions of 36 O.S.Supp.1994, §6519(C)(4)(b), and that was in force on the effective date of this Part may not remain in force beyond the first anniversary date of the health benefit plan subject to the restrictive provision that follows the effective date of this Part. A small employer carrier shall provide written notice to those small employers whose coverage will be changed pursuant to 365:10-5-160(a) at least thirty (30) days prior to the required change to the health benefit plan.

[Source: Added at 12 Ok Reg 3137, eff 7-31-95]

365:10-5-161. Rules related to fair marketing**(a) Marketing requirements.**

(1) A small employer carrier shall actively market each of its health benefit plans to small employers in this state. A small employer carrier may not suspend the marketing or issuance of the basic and standard health benefit plans unless the carrier has good cause and has received the prior approval of the Commissioner.

(2) In marketing the basic and standard health benefit plans to small employers, a small employer carrier shall use at least the same sources and methods of distribution that it uses to market other health benefit plans to small employers. Any producer authorized by a small employer carrier to market health benefit plans to small employers in the state shall also be authorized to market the basic and standard health benefit plans.

(b) Mandatory offer.**(1) Offer requirements.**

(A) A small employer carrier shall offer at least the basic and standard health benefit plans to any small employer that applies for or makes an inquiry regarding health insurance coverage from the small employer carrier. The offer shall be in writing and shall include at least the following information:

(i) A general description of the benefits contained in the basic and standard health benefit plans and any other health benefit plan being offered to the small employer, and

(ii) Information describing how the small employer may enroll in the plans.

(B) The offer may be provided directly to the small employer or delivered through a producer.

(2) Price quote and application requirements.

(A) A small employer carrier shall provide a price quote to a small employer, either directly or through an authorized producer, within ten (10) working days of receiving a request for a quote and such information as is necessary to provide the quote. A small employer carrier shall notify a small employer, either directly or through an authorized producer, within five (5) working days of receiving a request for a price quote of any additional information needed by the small employer carrier to provide the quote.

(B) A small employer carrier may not apply more stringent or detailed requirements related to the application process for the basic and standard health benefit plans than are applied for other health benefit plans offered by the carrier.

(3) Denial and price quote requirements.**(A) Explanation requirements.**

(i) If a small employer carrier denies coverage under a health benefit plan to a small employer on the basis of a risk characteristic, the denial shall be in writing and shall state with specificity the reasons for the denial (subject to any restrictions related to confidentiality of medical information). The written denial shall be accompanied by a written explanation of the availability of the basic and standard health benefit plans from the small employer carrier. The explanation shall include at least the following:

(I) A general description of the benefits contained in each such plan;

- (II) A price quote for each such plan; and
- (III) Information describing how the small employer may enroll in such plans.
 - (ii) The written information described in 365:10-5-161(b)(3) may be provided, within the time periods set forth in 365:10-5-161(2), directly to the small employer or delivered through an authorized producer.
- (B) The price quote required under 365:10-5-161 (b)(3)(A)(ii) shall be for the lowest-priced basic and standard health benefit plan for which the small employer is eligible.
- (c) A small employer carrier shall establish and maintain a toll-free telephone service to provide information to small employers regarding the availability of small employer health benefit plans in this state. The service shall provide information to callers on how to apply for coverage from the carrier. The information may include the names and phone numbers of producers located geographically proximate to the caller or such other information that is reasonably designed to assist the caller to locate an authorized producer or to otherwise apply for coverage.
- (d) The small group carrier shall not require a small employer to join or contribute to any association or group as a condition of being accepted for coverage by the small employer carrier. However, if membership in an association or other group is a requirement for accepting a small employer into a particular health benefit plan, a small employer carrier may apply such requirement, subject to the requirements of 36 O.S.Supp.1994, §6519(A)(2)(b).
- (e) A small employer carrier may not require as a condition to the offer or sale of a health benefit plan to a small employer that the small employer purchase or qualify for any other insurance product or service.
- (f) **Application requirements.**
 - (1) Carriers offering individual and group health benefit plans in this state shall be responsible for determining whether the plans are subject to the requirements of the Act and this Part. Carriers shall elicit the following information from applicants for such plans at the time of application:
 - (A) Whether or not any portion of the premium will be paid by or on behalf of a small employer, either directly or through wage adjustments or other means of reimbursement; and
 - (B) Whether or not the prospective policyholder, certificate holder or any prospective insured individual intends to treat the health benefit plan as part of a plan or program under Section 162 [other than (162(1))], Section 125 or Section 106 of the United States Internal Revenue Code.
 - (2) If a small employer carrier fails to comply with 365:10-5-161(f)(1), the small employer carrier shall be deemed to be on notice of any information that could reasonably have been attained if the small employer carrier had complied with 365:10-5-161(f)(1).
- (g) **Filing requirements.**
 - (1) A small employer carrier shall file annually the following information with the Commissioner related to health benefit plans issued by the small employer carrier to small employers in this state:
 - (A) The number of small employers that were issued health benefit plans in the previous calendar year (separated as to newly issued plans and renewals);

- (B) The number of small employers that were issued the basic health benefit plan and the standard health benefit plan in the previous calendar year (separated as to newly issued plans and renewals and as to class of business);
 - (C) The number of small employer health benefit plans in force in each county (or by zip code) of the state as of December 31 of the previous calendar year;
 - (D) The number of small employer health benefit plans that were voluntarily not renewed by small employers in the previous calendar year;
 - (E) The number of small employer health benefit plans that were terminated or nonrenewed (for reasons other than nonpayment of premium) by the carrier in the previous calendar year; and
 - (F) The number of small employer health benefit plans that were issued to small employer that were uninsured for at least the three (3) months prior to issue.
- (2) The information described in 365:10-5-161(g)(1) shall be filed no later than March 15 of each year.

[Source: Added at 12 Ok Reg 3137, eff 7-31-95]

365:10-5-162. Status of carriers as small employer carriers

(a) Within thirty (30) days after the effective date of the Act, each carrier providing health benefit plans in this state shall make a filing with the Commissioner indicating whether the carrier intends to operate as a small employer carrier in this state under the terms of this regulation.

(b) Subject to 365:10-5-162(c), a carrier shall not offer health benefit plans to small employers, or continue to provide coverage under health benefit plans previously issued to small employers in this state, unless the filing provided pursuant to 365:10-5-162(a) indicates that the carrier intends to operate as a small employer carrier in this state.

(c) Continuing coverage.

(1) If the filing made pursuant to 365:10-5-162(a) indicates that a carrier does not intend to operate as a small employer carrier in this state, the carrier may continue to provide coverage under the health benefit plans previously issued to small employers in this state only if the carrier complies with the following provisions:

(A) The carrier complies with the requirements of the Act (other than 36 O.S.Supp.1994, §§6520, 6521 and 6522) with respect to each of the health benefit plans previously issued to small employers by the carrier.

(B) The carrier provides coverage to each new entrant to a health benefit plan previously issued to a small employer by the carrier. The provisions of the Act (other than 36 O.S.Supp.1994, §§6520, 6521 and 6522) and this Part shall apply to the coverage issued to such new entrant.

(C) The carrier complies with the requirements of 36 O.S.Supp.1994, §6528, and 365:10-5-160 and 365:10-5-163 as they apply to small employers whose coverage has been terminated by the carrier and to individuals and small employers whose coverage has been limited or restricted by the carrier.

(2) A carrier that continues to provide coverage pursuant to 365:10-5-162(c) shall not be eligible to participate in the reinsurance program established under 36 O.S.Supp.1994, §6522.

(d) If the filing made pursuant to 365:10-5-162(a) indicates that a carrier does not intend to operate as a small employer carrier in this state, the carrier shall be precluded from operating as a small employer carrier in this state (except as provided for in 365:10-5-162(c)) for a period of five (5) years from the date of the filing.

[Source: Added at 12 Ok Reg 3137, eff 7-31-95]

365:10-5-163. Restoration of coverage

(a) Offer required and exceptions.

(1) Except as provided in 365:10-5-163(a)(2), a small employer carrier shall, as a condition of continuing to transact business in this state with small employers, offer to provide health benefit plan as described in 365:10-5-163(c) to any small employer whose coverage was terminated or not renewed by such small employer carrier after January 1, 1995.

(2) The offer required under 365:10-5-163(a)(1) shall not be required with respect to a health benefit plan that was not renewed if:

(A) The health benefit plans were not renewed for reasons permitted in 36 O.S.Supp.1994, §6516(A), or

(B) The nonrenewal was a result of the small employer voluntarily electing coverage under a different health benefit plan.

(b) The offer made under 365:10-5-163(a) shall occur not later than thirty (30) days after a carrier indicates its intention to operate as a small employer carrier in this state pursuant to 36 O.S.Supp.1994, §6520. A small employer shall be given at least sixty (60) days to accept an offer made pursuant to 365:10-5-163(a).

(c) A health benefit plan provided to a terminated small employer pursuant to 365:10-5-163(a) shall meet the following conditions:

(1) The health benefit plan shall contain benefits that are identical to the benefits in the health benefit plan that was terminated or nonrenewed.

(2) The health benefit plan shall not be subject to any waiting periods (including exclusion periods for preexisting conditions) or other limitations on coverage that exceed those limitations contained in the health benefit plan that was terminated or nonrenewed. In applying such exclusions or limitations, the health benefit plan shall be treated as if it were continuously in force from the date it was originally issued to the date that it is restored pursuant to 365:10-5-163 and 36 O.S.Supp.1994, §6528.

(3) The health benefit plan shall not be subject to any provision that restricts or excludes coverage or benefits for specific diseases, medical conditions or services otherwise covered by the plan.

(4) The health benefit plan shall provide coverage to all employees who are eligible employees as of the date the plan is restored. The carrier shall offer coverage to each dependent of such eligible employees.

(5) The premium rate for the health benefit plan shall be no more than the premium rate charged to the small employer on the date the health benefit plan was terminated or nonrenewed; provided that, if the number of case characteristics of the eligible employees (or their dependents) of the small employer has changed between the date the health benefit plan was terminated or nonrenewed and the date that it is restored, the carrier may adjust the

premium rates to reflect any changes in case characteristics of the small employer. If the carrier has increased premium rates for other similar groups with similar coverage to reflect general increases in health care costs and utilization, the premium rate may further be adjusted to reflect the lowest such increase given to a similar group. The premium rate for the health benefit plan may not be increased to reflect any changes in risk characteristics of the small employer group until one year after the date of health benefit plan is restored. Any such increase shall be subject to the provisions of 36 O.S.Supp.1994, §6515.

(6) The health benefit plan shall not be eligible to be reinsured under the provisions of 36 O.S.Supp.1994, §6521, except that the carrier may reinsure new entrants to the health benefit plan who enroll after the restoration of coverage.

[Source: Added at 12 Ok Reg 3137, eff 7-31-95]

365:10-5-164. Uniform Health Questionnaire

(a) Small employer carriers are not required to obtain health status information from a small employer prior to offering coverage to that small employer; however, if a small employer carrier seeks to obtain health status information for any reason, the carrier must use the form specified in Appendix VV.

(b) Small employer carriers are required to accept and use the uniform health questionnaire specified in Appendix VV beginning on the date that is six months after the effective date of this rule section. Small employer carriers may not vary the content of the form and may not ask for any other health status information from a small employer or its employees.

(c) A small employer carrier must accept a copy of the uniform health questionnaire as though it were an original.

(d) A small employer carrier shall consider information in a Uniform Questionnaire current for no less than 60 days after the date it is signed by the employee. During that time, no small employer carrier may require an employee to fill out the Uniform Health Questionnaire again or to affirm that the information is current.

(e) In connection with the issuance of coverage, the small employer carrier may require a small employer to complete the carrier's unique application for coverage, but that application may not include any health status inquiry or question related to the health of an employee or dependent.

[Added at 29 Ok Reg 1260, eff 7-14-12]