CHAPTER 220
SB 4 - FINAL VERSION

03/27/2019 1176s
06/06/2019 2379EBA

2019 SESSION

19-1101
01/04

SENATE BILL ***4***

AN ACT relative to the group and individual health insurance market.

SPONSORS: Sen. Feltes, Dist 15; Sen. Cavanaugh, Dist 16; Sen. Chandley, Dist 11; Sen. D'Allesandro, Dist 20; Sen. Dietsch, Dist 9; Sen. Fuller Clark, Dist 21; Sen. Hennessey, Dist 5; Sen. Kahn, Dist 10; Sen. Levesque, Dist 12; Sen. Morgan, Dist 23; Sen. Rosenwald, Dist 13; Sen. Sherman, Dist 24; Sen. Soucy, Dist 18; Sen. Watters, Dist 4; Rep. Butler, Carr. 7; Rep. McMahon, Rock. 7

COMMITTEE: Health and Human Services

ANALYSIS

This bill establishes the provisions of the Patient Protection and Affordable Care Act of 2009, Public Law 111-148, as amended in statute.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT relative to the group and individual health insurance market.

Be it Enacted by the Senate and House of Representatives in General Court convened:

220:1 New Paragraphs; Health Coverage; Definitions. Amend RSA 420-G:2 by inserting after paragraph VI the following new paragraphs:
VI-a. “Employee” means “employee” as defined in the Employee Retirement Income Security Act of 1974, 29 U.S.C. section 1002(6).
VI-b. “Essential health benefits” means the categories of coverage identified in 42 U.S.C. section 18022(b)(1) and as further defined and implemented by the Secretary of the Department of Health and Human Services from time to time.
220:2 Health Coverage; Definitions; Small Employer. Amend RSA 420-G:2, XVI(a) to read as follows:
XVI.(a) "Small employer" means a business or organization which employed on average, one and up to 50 employees[~~, including owners and self-employed persons,~~] on business days during the previous calendar year. A small employer is subject to this chapter whether or not it becomes part of an association, multi-employer plan, trust, or any other entity cited in RSA 420-G:3 provided it meets this definition.
220:3 Health Benefits; Premium Rates. RSA 420-G:4, I(d) is repealed and reenacted to read as follows:
(d)(1) In establishing the premium charged, health carriers providing coverage to individuals and small employers shall vary the premium rate with respect to the particular plan or coverage involved only by:

(A) Whether the plan or coverage covers an individual or family;

(B) Geographic rating area, except that the state shall constitute a single geographic rating area;

(C) Age, except that the maximum premium differential for age as determined by ratio shall be 3 to 1 for adults; and

(D) Tobacco use, except that the maximum differential rate due to tobacco use shall be 1.5 to 1.

(2) With respect to family coverage under an individual or small group health insurance policy, the rating variations permitted under subparagraphs (1)(A) and (D) shall be applied based on the portion of the premium that is attributable to each family member covered under the plan.

(3) Carriers shall adjust each health coverage plan or premium rate for age, based on the portion of the premium that is attributable to each family member covered under the plan or certificate, using the uniform age rating factors established by the commissioner pursuant to RSA 420-G:14, I(a)(2).

220:4 New Section; Essential Health Benefits. Amend RSA 420-G by inserting after section 4-c the following new section:

420-G:4-d Essential Health Benefits.

I. All health coverage offered by health carriers to individuals or small employers shall include coverage for essential health benefits and provide essential health benefits in a plan substantially equivalent to New Hampshire's essential health benefit benchmark plan in effect for the plan year 2019.

II. If the federal government ceases to define essential health benefits, the commissioner shall define essential health benefits for New Hampshire by rulemaking pursuant to RSA 541-A. The New Hampshire essential health benefits shall include at least the following general categories and the items and services covered within the categories:

(a) Ambulatory patient services.

(b) Emergency services.

(c) Hospitalization.

(d) Maternity and newborn care.

(e) Mental health and substance use disorder services, including behavioral health treatment.

(f) Prescription drugs.

(g) Rehabilitative and habilitative services and devices.

(h) Laboratory services.

(i) Preventive and wellness services and chronic disease management.

(j) Pediatric services, including oral and vision care; provided, that health coverage that does not specifically include such pediatric services shall be deemed to have offered the essential health benefit under this subparagraph if the health carrier has obtained reasonable assurance that such pediatric services are provided to the purchaser of the health coverage.

III. In defining the essential health benefits under paragraph II, the commissioner shall:

(a) Ensure that such essential health benefit reflects an appropriate balance among the categories described in such subparagraph, so that benefits are not unduly weighted toward any category;

(b) Not define essential health benefits in a manner which would allow carriers to make coverage decisions, determine reimbursement rates, establish incentive programs, or design benefits in ways that discriminate against individuals because of their age, disability, or expected length of life;

(c) Consider the health care needs of diverse segments of the population, including women, children, persons with disabilities, and other groups;

(d) Ensure that health benefits established as essential are not subject to denial to individuals against their wishes on the basis of the individuals' age or expected length of life or of the individuals' present or predicted disability, degree of medical dependency, or quality of life;

(e) Ensure that a health plan shall not be treated as providing coverage for the essential health benefits unless the plan provides that:

(1) Coverage for emergency department services shall be provided without imposing any requirement under the plan for prior authorization of services or any limitation on coverage where the provider of services does not have a contractual relationship with the plan for the provision of services which is more restrictive than the requirements or limitations that apply to emergency department services received from providers who do have such a contractual relationship with the plan; and

(2) If such services are provided out-of-network, the cost-sharing requirement, such as a copayment amount or coinsurance rate is the same requirement which would apply if such services were provided in-network; and

(f) Ensure that the New Hampshire essential benefits are at least actuarially equivalent to the essential health benefits previously established by the federal government.

(g) Ensure essential health benefits are provided in a plan substantially equivalent to New Hampshire's essential health benefit benchmark plan in effect for plan year 2019.

220:5 Health Coverage; Medical Underwriting. Amend RSA 420-G:5, I and II to read as follows:

I. Health carriers providing health coverage [~~for individuals may~~] ***shall not*** perform medical underwriting, including the use of health statements or screenings or the use of prior claims history[~~, to the extent necessary to establish or modify premium rates as provided in RSA 420-G:4~~].

II. [~~Health carriers providing health coverage for individuals may refuse to write or issue coverage to an individual because of his or her health status.~~] Regardless of claim experience, health status, or medical history, health carriers providing health coverage for ***individual or*** small employers shall not refuse to write or issue any of their available coverages or health benefit plans to any ***individual or*** small employer group that elects to be covered under that plan and agrees to make premium payments and meet the other requirements of the plan.

II-a. Health carriers shall not establish any annual or lifetime limits on the dollar value of essential health benefits for any individual, except annual or lifetime limits may be imposed on specific covered benefits that are not essential health benefits to the extent permitted under federal law as of January 1, 2019.

220:6 Health Coverage; Guaranteed Issue. Amend RSA 420-G:6, III to read as follows:

III. Health carriers shall actively market, issue, and renew all of the health coverages they sell in the ***individual and*** small employer market to all ***individuals and*** small employers ***in that market***. ***Health carriers offering health coverage to small employers shall permit small employers to purchase health coverage at any point during the year, with the small employer's health coverage consisting of the 12-month period beginning with the small employer's effective date of coverage.***

III-a. A health carrier shall not rescind health coverage issued to an individual or with respect to an individual covered under health coverage issued to a small or large employer, including a group to which the individual belongs or family coverage in which the individual is included, after the individual is covered under the plan, unless:

(a) The individual, or a person seeking coverage on behalf of the individual, performs an act, practice, or omission that constitutes fraud; or

(b) The individual makes an intentional misrepresentation of material fact, as prohibited by the terms of the plan or coverage.

III-b. For the purposes of subparagraph III-a(a), a person seeking coverage on behalf of an individual shall not include a producer, or an employee or authorized representative of the health carrier.

III-c. A health carrier in the individual, small group, or large group market shall provide individuals equal access to all health programs, coverage, or activities without discrimination on the basis of sex, sexual orientation, gender identity, race, creed, color, marital status, familial status, physical or mental disability, or national origin, as those terms are defined under RSA 354-A.

220:7 Health Coverage; Guaranteed Issue. Amend RSA 420-G:6, V(d)-(g) and paragraph V-a to read as follows:

(d) Failure ***of an employer sponsoring group coverage*** to meet the minimum employee participation number or percentage requirement of the health coverage.

(e) [~~The small employer is no longer actively engaged in the business that it was engaged in on the effective date of the health coverage.~~

~~(f)~~] The employer medically underwrites or otherwise violates a provision of this chapter.

[~~(g)~~] ***(f)*** The health carrier is ceasing to offer health coverage in such market, in accordance with paragraph VII.

V-a. Health carriers shall not underwrite insureds at time of renewal [~~unless an insured has applied for an increase in his or her coverage~~].

220:8 Health Coverage; Preexisting Conditions. RSA 420-G:7 is repealed and reenacted to read as follows:

420-G:7 Preexisting Condition Exclusion Periods. A health carrier shall not impose any preexisting condition exclusion with respect to coverage in the individual, small group, or large group market.

220:9 Health Coverage; Open Enrollment. RSA 420-G:8 is repealed and reenacted to read as follows:

420-G:8 Open Enrollment.

I. Each small employer group shall have an annual employee open enrollment period 60 days in length, occurring prior to the small employer group's anniversary date. During open enrollment, employees or eligible dependents may apply to the small employer for health coverage or make a change in their membership status becoming effective upon the small employer group's anniversary date, subject to providing the health carrier 30-days notice.

(a) A health carrier shall not refuse any small employer employees or eligible dependents applying for health coverage during the open enrollment period.

(b) Employees or eligible dependents coming on at the time of an open enrollment period shall have the same premiums as the rest of the small employer group shall have upon the new or renewal effective date.

II. A small employer employee who has met any employer imposed waiting period and is otherwise eligible for health coverage, who declines a small employer's health coverage plan during the initial offering or subsequent open enrollment period, shall be a late enrollee and shall not be allowed on the plan until the next open enrollment period.

III. A large employer employee, who has met any employer imposed waiting period and is otherwise eligible for health coverage, may enroll within 31 days of becoming eligible and shall not be required to submit evidence of insurability based on medical conditions. If a person does not enroll at this time, that person is a late enrollee. Each large employer group shall have an open enrollment period during which late enrollees may enroll and shall not be required to submit evidence of insurability based on medical conditions.

IV. Paragraphs II and III notwithstanding, an eligible employee or eligible dependent shall not be considered a late enrollee if:

(a) The person was covered under public or private health coverage at the time the person was able to enroll; and

(1) Has lost public or private health coverage as a result of termination of employment or eligibility, the termination of the other plan's coverage, death of a spouse, or divorce; and

(2) Requests enrollment within 30 days after termination of such health coverage; or

(b) Is employed by an employer that offers multiple health coverages and the person elects a different plan during an open enrollment period; or

(c) Was ordered by a court to provide health coverage for an ex-spouse or a minor child under a covered employee's plan and the request for enrollment is made within 30 days after issuance of such court order.

V.(a) If individual coverage offered by a health carrier or a large or small employer group's health coverage plan offers dependent coverage and the individual is enrolled in such coverage or the employee is enrolled or has met any applicable waiting period and is eligible to be enrolled, but for a failure to do so during a previous open enrollment period, a person who becomes a dependent of the individual or employee through marriage, birth, adoption or placement for adoption, and the employee if not otherwise enrolled, shall be provided with a special enrollment period.

(b) If an individual has minimum essential coverage through individual coverage offered by a health carrier or as an employee through a large or small employer group's health coverage plan, and the individual loses such coverage for any reason other than failure to pay premiums or a basis on which rescission is permitted pursuant to RSA 420-G:6, IV, the individual shall be provided with a special open enrollment period under any other individual health coverage or any large or small employer group health coverage plan for which the individual becomes eligible.

(c) The special enrollment period shall be at least 60 days in length and shall begin on the later of:

(1) The date dependent health coverage is made available; or

(2) The date of the marriage, birth, adoption, placement for adoption, or loss of minimum essential coverage, as the case may be.

(d) If the person seeks enrollment during such special enrollment period, the health coverage shall become effective:

(1) In the case of marriage or loss of minimum essential coverage, on or before the first day of the first month following the completed request for enrollment;

(2) In the case of birth, as of the date of birth; or

(3) In the case of adoption or placement for adoption, the date of such adoption or placement for adoption.

220:10 New Paragraphs; Health Coverage; Participation Requirements. Amend RSA 420-G:9 by inserting after paragraph IV the following new paragraphs:

V. For the purpose of calculating whether or not a small employer group's enrollment meets a carrier's minimum participation requirements:

(a) Any full-time or part-time employee who is covered as a dependent on another person's health coverage or is enrolled in a governmental plan such as Medicare, Medicaid, or TRICARE shall be excluded from the count.

(b) Any full-time or part-time employee who has been found eligible for a premium tax credit and is enrolled in a qualified health plan (QHP) purchased through an exchange shall be excluded from the count.

(c) The total number of full-time employees and part-time employees who are otherwise eligible for health coverage shall be counted.

VI. The requirements under this section shall be the only participation requirements. Minimum employer contributions, or other criteria, shall not be permitted.

220:11 Health Coverage; Rulemaking. RSA 420-G:14, I is repealed and reenacted to read as follows:

I.(a) The commissioner may adopt rules, under RSA 541-A, relative to:

(1) Uniform age rating levels that are consistent with 45 C.F.R. 147.102.

(2) Special enrollment periods designed to allow employees to purchase individual coverage on the exchange during their employer's open enrollment period, even if the employer's open enrollment period does not coincide with the open enrollment period in the individual market.

(3) Essential health benefits, in accordance with RSA 420-G:4-d, II and III.

(b) The commissioner may adopt further rules, pursuant to RSA 541-A, necessary to the proper administration of this chapter.

220:12 Standards for Accident and Health Insurance; Preexisting Conditions. RSA 415-A:5, III is repealed and reenacted to read as follows:

III. Health carriers issuing policies subject to RSA 420-G shall not impose any preexisting condition exclusion that is inconsistent with that chapter.

220:13 Health Coverage; Applicability and Scope of Chapter. Amend RSA 420-G:3, I(b) to read as follows:

(b) This chapter shall not apply to student major medical expense coverage, except student major medical expense coverage shall be given credit and shall count as credit for previous health coverage as defined in RSA 420-G:7[~~, III~~].

220:14 Repeal. RSA 420-G:4-c, II, relative to a health coverage tax incentive plan, is repealed.

220:15 Effective Date. This act shall take effect 60 days after its passage.

Approved: July 12, 2019
Effective Date: September 10, 2019