

Questions regarding Administrative Letter 2018-04

From: Michele Hansen

Mon, Jan 27, 2020 at 3:36 PM

To: bureauofinsurance@scc.virginia.gov

Good morning, I have a few questions regarding [Administrative Letter 2018-04](#) regarding self-employed qualification for small business health insurance that I was hoping you could help me answer. I spoke with [Staff Member] this morning and she asked me to put my questions in writing.

I am specifically wondering about Section 8, mom-and-pop businesses: "Does the bill permit plans to enroll joint owners of a "mom-and-pop" business in small group coverage? No. If they are both owners of the corporation or both partners in an LLC, there is no sole shareholder or sole member, and thus, no employees under the new law. If, however, either of the owners is the sole shareholder of the corporation or sole member of the LLC, then that owner and an immediate family member of that owner would qualify as employees and coverage could be obtained in the small group market."

Can you let me know whether there is treatment for either of the following hypothetical scenarios under the law? 1) Does the law, or the related regulations, have requirements regarding the prior ownership of the company? Under the law, a mom-and-pop business where one spouse is the shareholder and one is the employee would qualify for small-business insurance. For example, if a business were to change its ownership structure and go from being 50-50 husband-wife to 100-0 (with one spouse taking full ownership, and the other not being an owner), would the company qualify for small business insurance? i.e. does the law consider the past ownership structure of the company?

2) Does the law, or the related regulations, consider holding companies? The letter states, "If they are both owners of the corporation or both partners in an LLC, there is no sole shareholder or sole member, and thus, no employees under the new law. If, however, either of the owners is the sole shareholder of the corporation or sole member of the LLC, then that owner and an immediate family member of that owner would qualify as employees and coverage could be obtained in the small group market." Under this hypothetical, let's say there is a holding company which is 50-50 owned by the husband and wife. The holding company owns a subsidiary which is 100-0 owned and employs both the owner-spouse and the employee-spouse. Would this business qualify for small business health insurance?

I sincerely appreciate your assistance in navigating these regulations.

Thank you,  
Michele Hansen  
Arlington

From: BureauofInsurance  
Mon, Jan 27, 2020 at 10:10 PM  
To: Michele Hansen

Thank you for your e-mail inquiry.

It may be helpful to know that during the 2019 Virginia General Assembly session, the definition of small employer changed.

Please view the following link:

<https://law.lis.virginia.gov/vacode/title38.2/chapter34/section38.2-3431/>. The definition of small employer changed to delete "sole" from shareholder/member.

The history of Senate Bill 1475 is as follows:

Health insurance; small employers. Revises the definition of "small employer" for purposes of group health insurance policies to provide that an individual who performs any service for remuneration under a contract of hire for (i) a corporation in which he is a shareholder or an immediate family member of a shareholder or (ii) a limited liability company in which he is a member, regardless of the number of members of the limited liability company, shall be deemed to be an employee of the corporation or the limited liability company. The measure provides that a health insurance issuer shall not be required to issue more than one group health plan for each employer identification number issued by the Internal Revenue Service for a business entity, without regard to the number of shareholders or members of such business entity. This bill is identical to HB 2719.

We ask that you review this information, and if additional assistance is needed, to please contact our office.

Commonwealth of Virginia Bureau of Insurance

From: Michele Hansen  
Mon, Jan 27, 2020 at 11:15 PM  
To: BureauofInsurance

Thank you for providing that additional information. For clarity, this means that a company that only employs owners, even if they are married, is eligible for group health insurance?

From: BureauofInsurance  
Thu, Jan 30, 2020 at 4:39 PM  
To: Michele Hansen

Thank you for your follow-up inquiry. It appears that the change in law is to address business owners in this situation. However, it is up to the insurer to underwrite the group to determine eligibility. If the carrier denies coverage, we should look into it to determine whether the carrier is acting in accordance with the law.