



DEPARTMENT OF INSURANCE
STATE OF NORTH DAKOTA

Jim Poolman
Commissioner of Insurance

BULLETIN 2001-2

To: All companies authorized to market small employer insurance in North Dakota
From: Jim Poolman, Insurance Commissioner 
Date: May 29, 2001
Re: Bulletin 2001-2 — Delay in issuance of small-employer coverage

SCOPE AND APPLICIABILITY

It has come to our attention that some companies authorized to market small-employer health insurance in North Dakota are delaying or denying the issuance of small-employer insurance to a business that did not exist in the prior calendar year. The purpose of this bulletin is to clarify the statutory definition of "small-employer" so that insurers correctly comply with N.D. Cent. Code § 26.1-36.3-06 — **Availability of coverage**. This bulletin applies to all companies authorized to market small-employer health insurance in North Dakota.

DELAY IN ISSUANCE OF SMALL-EMPLOYER COVERAGE

When issuing coverage to small employers, some companies are misinterpreting the definition of a "small employer" as defined by the federal Health Insurance Portability & Accountability Act (HIPAA), and by N.D. Cent. Code § 26.1-36.3-01(35). The definitions have been misread to mean that a small employer must have been in existence during the previous calendar year to qualify for coverage; however, the small-employer definition only defines a small employer, but does not define when coverage can begin.

Chapter 42 U.S.C. § 300gg-91(e)(6)(B) — **Employers not in existence in preceding year** — provides clarification by setting forth explicit guidelines for determining eligibility as a small employer in the current calendar year. The relevant subsection states:

In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small or large employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

COMPLIANCE

A company that will not accept a small-employer application or that delays the issuance of small-employer coverage to new businesses that did not exist in the prior calendar year must cease these practices immediately. A carrier of small-employer health insurance must provide coverage in accordance with N.D. Cent. Code § 26.1-36.3-06 — **Availability of coverage**.

Thank you for your prompt attention to this matter. If you require additional information or clarification, please feel free to contact Vance Magnuson by phone at 701.328.2440, or by e-mail at vmagnuso@state.nd.us.