



**ARKANSAS INSURANCE DEPARTMENT
LEGAL DIVISION**

1200 West Third Street
Little Rock, AR 72201-1904
501-371-2820
FAX 501-371-2629

BULLETIN 11-99

August 13 , 1999

TO: ALL GROUP DISABILITY INSURERS AND AGENTS

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: ROLE OF PREEXISTING CONDITIONS UNDER ARK. CODE ANN. §23-86-108(7)(C) WHEN EMPLOYERS CHANGE CARRIERS.

DEFINING THE TERM "EMPLOYEE" UNDER ARK. CODE ANN. §23-86-106(1)(3) AND HIPAA TO ASSESS WHETHER AN EMPLOYER IS SMALL OR LARGE UNDER THE ARKANSAS INSURANCE CODE.

There are two purposes of this Bulletin. The first is to clarify the application of Ark. Code Ann. §23-86-108(7)(C) with respect to preexisting conditions. The second purpose is to explain the definition of "employee" under Ark. Code Ann. §23-86-106(1)(3) and Arkansas' Health Insurance Portability and Accountability Act of 1997 (HIPAA), codified as Ark. Code Ann. §23-86-301 et seq.

ROLE OF PREEXISTING CONDITIONS UNDER ARK. CODE ANN. §23-86-108(7)(C) WHEN EMPLOYERS CHANGE CARRIERS.

The issue of preexisting conditions has developed due to disability carriers contacting the Life and Health Division of the Arkansas Insurance Department concerning re-application of the preexisting condition clause when a policy is transferred to a new carrier. The problem arises when an employer obtains group coverage through a carrier and covers his employees. Subsequently, the employer decides to switch carriers to obtain a better premium rate or for some other reason. The new carrier then imposes their own preexisting condition clause even though the employee's preexisting coverage time was initiated upon coverage by the employer.

The Department interprets Ark. Code Ann. §23-86-108(7)(C) to prohibit this type of conduct. A carrier shall not apply a preexisting condition clause to a condition that

began after the employee was initially covered by the employer's plan. If a disability carrier accepts a new group for their plan in which the employer has previously insured its group of employees, the preexisting condition date for the subsequent plan shall be retroactive to the initial date the employee was covered by the employer's plan. The preexisting condition coverage shall not be determined by the time a particular carrier instituted coverage but is determined by the time in which the employee was initially covered by the employer's plan.

The interpretation of preexisting conditions discussed above is subject to the required provisions of group disability policies under Ark. Code Ann. §23-86-108, including, but not limited to, the requirement that the group disability benefits were provided to a group consisting of more than fifteen (15) members.

DEFINING THE TERM "EMPLOYEE" UNDER ARK. CODE ANN. §23-86-106(1)(3) AND HIPAA TO ASSESS WHETHER AN EMPLOYER IS SMALL OR LARGE UNDER THE ARKANSAS INSURANCE CODE.

The term "employee" shall be defined in Arkansas as it is provided under Ark. Code Ann. §23-86-106(1)(3) and HIPAA¹. These statutes do not provide the amount of hours an employee must work to be considered an "employee" for purposes of the size of the group insured. The Department takes the position that an individual working at least thirty (30) hours per week for an employer should be considered an "employee" for purposes of determining the size of the group insured.

The number of hours a week that must be worked to be considered an "employee" for a plan can be determined by a carrier. The carrier has the authority to lower the number of required hours to be a part of a plan as long as applied to all employers in the plan. Moreover, the employers can increase the number of hours of eligibility an employee must work above the carrier requirement. The employer may not lower the number of hours required below the carrier's requirement.

If you have any questions regarding this Bulletin, please contact the Arkansas Insurance Department Life and Health Division at (501) 371-2800.

MIKE PICKENS
INSURANCE COMMISSIONER

¹ "Employee" is defined under HIPAA as having the meaning given to such term under Section 3(6) of the Employee Retirement Income Security Act of 1974 (ERISA). ERISA is codified as Title 29 U.S.C. §1001 et seq. ERISA defines "employee" as any individual employed by an employer. See 29 U.S.C §1002(6).