



STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
INSURANCE DIVISION  
500 JAMES ROBERTSON PARKWAY 4<sup>TH</sup> FLOOR  
NASHVILLE, TENNESSEE 37243-5065  
615-741-2176

January 16, 2009

Clay Phillips, Esq.  
Director and Associate General Counsel  
State Government and Public Affairs  
Blue Cross Blue Shield of Tennessee  
3200 West End Avenue  
Nashville, TN 37203

**Re: Health Group Cooperatives**

Dear Mr. Phillips,

This letter is written in response to your letter dated October 21, 2008, to John F. Morris whereby you seek guidance from the Department. Your letter shall be treated as a request for an interpretive opinion from the Insurance Division of the Tennessee Department of Commerce and Insurance ("Division") pursuant to Tenn. Comp. R. & Regs. Tit. Dept. of Commerce and Ins., ch. 0780-01-77-.01(1).

The facts as understood and summarized by the Division are as follows:

Blue Cross Blue Shield of Tennessee ("BCBST") is licensed by the Department as a hospital medical service corporation issuing and delivering health insurance contracts in the State of Tennessee.

BCBST wishes to launch a Health Group Cooperative pilot program pursuant to recent amendments to the Tennessee Small Employer Group Health Coverage Reform Act, Tenn. Code Ann. §§ 56-7-2201, *et seq.* BCBST anticipates insuring ten (10) health group cooperatives ("HGCs") for a period of two (2) years. It is BCBST's intent to only contract with HGCs, made up of small employers who voluntarily come together to form a private purchasing cooperative for the purpose of obtaining health insurance. It is BCBST's expectation that it will be the sole insurer for each of the ten (10) HGCs it contracts with for the length of the pilot period. In the event an HGC is found to be receiving coverage through

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another insurer in addition to receiving coverage from BCBST in the same policy year, BCBST will terminate coverage with the HGC employer members.

Each HGC contracting with BCBST shall be comprised of no fewer than ten (10) small employers, each having at least two (2) employees. Thus, an HGC is only qualified to purchase insurance if its employer members collectively have at least twenty (20) eligible employees. Further, no employer member will be eligible for coverage if it has more than fifty (50) employees.

BCBST intends to offer one (1) pre-determined open enrollment period per year, with all employer groups having the same renewal date. New employer members of the HGC may only initiate coverage during the annual open enrollment period. Eligible employees of HGC employer members may enroll in the plan either during the annual enrollment period or after a qualifying event. BCBST anticipates offering at least two (2) plan options for eligible employees to choose from.

BCBST will initially rate the HGC on an individual basis, with each employer member of the HGC being rated separately based upon its experience and other rating factors. After the first policy year, BCBST will rate the HGC employer members collectively, essentially treating the employer members as one large group. Any employers that subsequently receive their insurance through the HGC will be rated individually upon enrollment, and then with the HGC at the beginning of its second year of membership. The contract with the HGCs will require that employers members shall pay premiums directly to BCBST, and not through the HGC. In the instance that BCBST is required to collect premiums through the HGC, they will insist that the premiums are kept in an account separate from any funds the HGC may collect to cover administrative fees or other charges.

You opine on behalf of BCBST that the above actions are in compliance with the Tennessee Small Employer Group Health Coverage Reform Act, Tenn. Code Ann. §§ 56-7-2201, *et seq.* as amended. With respect to BCBST's desire to have a self-imposed limitation of only insuring no more than (10) HGCs, you request the Division to waive the requirements of Tenn. Code Ann. § 56-7-2208(e).

**RESPONSE:**

The requirements for the formation and organization of health group cooperatives are found primarily in Tenn. Code Ann. §§ 56-7-2222 through 2225. The legislation that authorizes the formation of HGCs was placed in Title 56, Chapter 7, Part 22 which is also titled the Tennessee Small Employer Group Health Coverage Reform Act ("Act"). Thus, it is the Division's position that all laws relative to health insurance purchased by small employers also apply to HGCs.

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The initial issue for the Division to address is the applicability of Tenn. Code Ann. § 56-7-2208(e)'s requirements that each small employer carrier is to offer every small employer at least one (1) basic and one (1) standard health care plan. Due to an HGC being defined as a small employer, it is the Division position that HGCs are entitled to be offered a basic and a standard plan from all small employer carriers in Tennessee. As such, BCBST, as a small employer carrier, may not limit the amount of HGCs it offers health insurance coverage to. However, should a small employer carrier offer a small employer a plan other than a basic and standard plan, it may limit the number of small employers and HGCs it chooses to sell such a policy to. Thus, if BCBST designed a product different from its basic and standard plan, it could offer such a product on a pilot program basis and limit the number of HGCs or other small employers to which it offered such a plan. Therefore, the Division will not waive the applicability of Tenn. Code Ann. § 56-7-2208(e) to BCBST in its offering of basic and standard plans to all small employers in Tennessee, including HGCs.

The second issue is whether BCBST can terminate coverage of an HGC if the HGC obtains alternative coverage for its employer members from another small employer carrier. Tenn. Code Ann. § 56-7-2222(a)(4) provides that an HGC shall allow its eligible employees to choose from the health insurance plans offered by the small employer carrier chosen by the HGC. It is the Division's position that this means that only one small employer carrier can provide coverage for the eligible employees of an HGC at one time. As such, it is the Division's position that it is appropriate for BCBST to terminate its coverage of an HGC that obtains coverage elsewhere.

As to the number of employees that must participate in order to offer coverage to an HGC, the Division agrees with BCBST's assessment of the law. Tenn. Code Ann. § 56-7-2222(1) provides that a HGC contain at least one thousand (1,000) eligible employees or ten (10) employer members. It is the Division's position that an HGC containing at least ten (10) participating employers meets the requirements of this Section. Based on the definition of "small employer" in Tenn. Code Ann. § 56-7-2203(23), an employer must have between two (2) and fifty (50) eligible employees to join a health group cooperative. As such, the minimum number of eligible employees any HGC can have is (20). This number should be verified by insurers annually to determine whether coverage can be renewed.

As to the issue of having a single open-enrollment period each year for employers to join the cooperative, it is the Division's position that such is permissible under Tenn. Code Ann. § 56-7-2222(a)(3). This Section only requires that the open-enrollment period be no less frequent than once a year. While this would certainly allow open-enrollment to occur more frequently than annually, there does not seem to be any requirement that it be more frequent than annually. Further, this Section does not prohibit the annual open enrollment period for membership from coinciding with an annual open-enrollment period for eligible employees to change their benefits pursuant to Tenn. Code Ann. § 56-7-2222(a)(3).

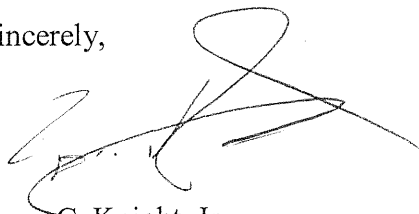
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It is the Division's position that BCBST may not require employer members of an HGC to directly pay its premiums for health insurance coverage to BCBST. Tenn. Code Ann. § 56-7-2222(a)(7) indicates that, "[a]t the cooperative's discretion, premiums may be paid to the health insurance plans by the cooperative or by member small employers". Thus, while employer members can pay their premiums directly to the insurer, it is at the discretion of the HGC and not either the employer member or the insurer. Thus, BCBST must be sure to make the HGC aware of this discretion and the contract should provide for the election of this option.

With respect to rating, Tenn. Code Ann. § 56-7-2222(a)(7) allows cooperatives to operate with any rating arrangement in place by the insurer who is providing coverage. Either rating each small employer separately, or rating the group as a whole is permissible pursuant to this Section. Likewise, it is the Division's position that rating employer members individually upon entry into the HGC and then as part of the entire group after the first year is permissible under this law.

This response by the Insurance Division to a specific fact situation relating to the interpretation of the Tennessee Insurance Law should not be construed as a legal position or opinion of the Commissioner of Commerce and Insurance or any other official in the Department of Commerce and Insurance. As each inquiry is reviewed on the specific facts presented, this response is based only on such facts and may not be used as precedent. Any variation in the facts presented to the Insurance Division could result in a different conclusion as asserted herein.

Sincerely,



Larry C. Knight, Jr.  
Assistant Commissioner for Insurance

LCK/lnw

cc: Leslie A. Newman, Commissioner  
Shawn Kiser Hawk, Director, Actuarial Services Section  
Vicky Stotzer, Actuary  
LaCosta N. Wix, Assistant General Counsel