

STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 FREMONT STREET  
SAN FRANCISCO

Bulletin 94-9A  
October 10, 1995

TO: ALL INSURERS PROVIDING "HEALTH" INSURANCE TO SMALL EMPLOYERS; OTHER INTERESTED PARTIES

SUBJECT: "ACTIVELY AT WORK" OR "NOT DISABLED" REQUIREMENTS IN SMALL EMPLOYER HEALTH INSURANCE.

Concerns have been expressed to this Department that Bulletin 94-9, of October 7, 1994, can be construed to make it difficult for insurers to challenge the addition of non-bona-fide employees to small employer health benefit plans by seeming to place the burden of proof on insurers to show that such persons were not "eligible employees".

We disagree that the Bulletin can be so construed, but we hereby clarify its intent by adding the phrase, "for example, individuals who cannot substantiate that they have actively worked for the employer with a normal workweek of 30 or more hours", to the end of the second sentence of the final paragraph on the first page. That paragraph now reads, in part:

"Some policy drafters may have believed that the phrase ". . . actively engaged on a full time basis in the conduct of the business of the small employer . . .", in Ins. C. §10700(f), authorized "actively at work" requirements. We think not - we believe that the quoted phrase was intended to provide a basis for denying coverage to persons who, while on the employer's payroll, were not bona fide employees, *for example, individuals who cannot substantiate that they have actively worked for the employer with a normal workweek of 30 or more hours*. Note that there is no language in the definition of "dependent" (Ins. C. §10700(e)) upon which to base a parallel "not disabled" requirement for dependents' coverage. . . ."

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