

# Association of Insurance Compliance Professionals

Group Trusts & Associations- New Challenges

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# Group Trusts & Associations- New Challenges

- Overview
  - What are Eligible Groups
  - Association Group Issues
  - Discretionary groups
  - Group Life vs Group Health
  - Extraterritorial (ET) concerns
  - What are the concerns?

# Eligible Group Issues

- Eligible Groups are defined as “permissible groups that may be issued a policy of group health or group life coverage in the state.”
- Each state typically has their own list and definition of what constitutes an eligible group.
- A few states provide no guidelines or restrictions on eligible groups- ex. DC, RI
- This can be good or bad

# Eligible Group Issues

- NAIC Model 100 s 4 (Health) & s 565 (Life)
  - (A) Employer or trustees of a fund established by an employer
  - (B) Creditor
  - (C) Labor Union
  - (D) Trust established by ER's or Labor Unions or combined ER & Labor Union
  - (E) Association or Association formed trust
  - ( F) Credit Union

# Eligible Group Issues

- Other Types of Groups
  - Blanket Groups
  - Financial Institutions
  - Affinity Groups
  - Discretionary Groups- including discretionary group trusts

# Discretionary Groups

- Groups that do not meet the standard eligible group requirements, which “in the discretion of the commissioner” would be acceptable
- Generally must meet the 3 prong test:
  - (1) The issuance of such group policy is not contrary to the best interest of the public;
  - (2) The issuance of the group policy would result in economies of acquisition or administration; and
  - (3) The benefits are reasonable in relation to the premiums charged.

# Affinity Groups

- Buyers clubs, travel clubs, purchasing organizations, ethnic and multi cultural organizations.
- Unless the group would qualify as eligible group under group health, group life or blanket health then these groups would be considered discretionary groups.



# Association Groups

- Now for the bigger focus these days: Association Groups!
  - The NAIC has been working on an updated definition (Model Bill 100 last revised 2007) of an eligible “association” group permitted to be issued a group health insurance policy.
- To date no formal change has been made
- Association groups under the group life (Model Bill (565) remain as adopted in 1988.

# Association Groups

As a refresher – the current model criteria for associations:

- 100 (E) (1) A group health policy may be issued to:
  - An association
  - or to a trust or to the trustees of a fund established by an association or associations otherwise eligible for issuance of a policy
  - and maintained, directly or indirectly, by the association or associations
  - for the benefit of members of one or more associations.

As long as the following requirements are met.....!

# Association Groups

- 100( E ) (2) (a) An association shall not be controlled by an insurer as evidenced by the operation of the association.

# Association Group

- 100 ( E ) ( 2 ) ( b ) The following factors may be used as evidence to determine whether an association is an insurer-operated association:
  - i. Common board members, officers, executives or employees;
  - ii. Common ownership of the insurer and the association or other eligible group; or
  - iii. Common use of the same office space or equipment utilized by the insurer to transact insurance

# Association Group

- 100 ( E ) (3) An association may use the solicitation of insurance as one of its methods to obtain new members.

# Association Group

- 100 (E ) (4) The association or associations shall:
  - a) Have at the outset a minimum of 100 persons;
  - b) Have a shared or common purpose that is not primarily a business or customer relationship;
  - c) Have been organized and maintained in good faith primarily for purposes other than that of obtaining insurance;
  - d) Have been in active existence for at least one year;  
and

# Association Group

- e) Have a constitution and by-laws that provide that:
  - i. The association or associations hold regular meetings not less than annually to further the purposes of the members;
  - ii. Except for credit unions, the association or associations collect dues or solicit contributions from members; and
  - iii. Association members have voting privileges and representation on the governing board and committees.

# Association Groups

- 100 ( E) (5) The policy shall be subject to the following requirements:
  - 100 ( E) (5) (a) The The policy may insure members of the association or associations, employees of the association or associations, or employees of members, or one or more of the preceding or all of any class or classes thereof for the benefit of persons other than the employee's employer.



# Association Group

- 100 ( E) (5) (b) The premium for the policy shall be paid from funds contributed by the association or associations, or by employer members, or by both, or from funds contributed by the covered persons or from the covered persons and the association, associations or employer members.
- 100 ( E) (5) (c) The A policy on which no part of the premium is to be derived from funds contributed by the covered persons specifically for their insurance must insure all eligible persons, except those who reject coverage in writing or who do not satisfy evidence of insurability.

# Association Group

- 100 ( E) (5) (d) The An insurer may exclude or limit the coverage on any individual as to whom evidence of individual insurability is not satisfactory to the insurer unless otherwise prohibited by any other applicable law or regulations adopted by the commissioner.

# Association Group

- 100 ( E ) (6) (a) In determining whether an association meets the standards, the commissioner shall consider whether the association's primary method of obtaining new members is not through, or in conjunction with, the solicitation of insurance.
- 100 ( E ) (6) (b) If the commissioner determines that an association uses the solicitation of insurance as its primary method of obtaining new members, the commissioner shall not use this determination as the sole criterion for the disapproval of a group.

# Association Group

- 100 ( E )(7) Some of these provisions [(4)(b) & (c) and (6) (a)] shall not apply to any association that made available group health insurance to any of its members prior to the effective date that the new requirements are enacted.
- 100 ( E ) (7) However, for any such association policy that would not otherwise be eligible for issuance under the new rules the insurer shall disclose its compensation and other information as described in the Model.

# Association Group

- 100 (E) (8) If an insurer collects membership fees or dues on behalf of an association, the insurer shall disclose to the members of the association that the insurer is billing and collecting membership fees and dues on behalf of the association.

# Association Group

## State experiences

- Things have changed in the past 10 + years. It is not as easy to gain approval of associations.
- Almost 50% or more of the states have their “red flag antenna” up when requesting approval for an association group.
- Be aware: the DOI will check websites and will call the phone number on the association materials

# Association Group

- State Experiences:
  - When filing submit as much information as you can. Explain in detail the marketing plan for the group in the transmittal.
  - Don't make the state ask for the info if you know they require it.
  - Be prepared to explain why the group has benefits other than insurance. Provide newsletters, etc .
  - Possible conference call between the DOI and the association group rep and you may help.

# Association Group

- State experiences
  - Submission of association documents:
    1. Constitution and by laws
    2. Evidence of meetings, voting and minutes
    3. Evidence of dues
    4. Enrollment materials to prove the membership enrollment is separate from insurance enrollment
    5. Brochures listing the benefits of membership to show some common purpose and benefits other than insurance.
    6. Website materials



# Association Group

## State experiences

- The following states typically will not approve a request to issue to “all eligible associations” in the state and will require association documents for each association:
  - AK, AR, CO, ID, IA, LA, MN, MO, MT, MD, NH, NV, NC, OR, SD, TX, UT, VT, WA, WV
- The following may accept a “we will tell you later when we have an association in mind”: ID, WV
- The following states may ask but have been inconsistent in requiring Association documents: CT, IN, OK

# Association Group

## State Experiences:

- Questions on associations tend to be raised more on health product filings, than life, but in general it is the nature of the group that is the issue, not the product.
- If speed to market is goal- file for one group, hopefully a traditional eligible group, to get the product approved. Go back in later for expansion of group marketing. Some will require a separate form number for different groups: ex: TX

# Association Group

- State Experiences:
  - Associations that don't meet the requirements will be considered a discretionary group.
  - If so be prepared to meet the 3 prong test

# Eligible Group Issues

- Health vs Life:
  - More scrutiny on health groups vs life groups due to nature of health insurance
  - HIPPA and ACA put more scrutiny on association groups, guarantee issue, guarantee renewability of coverage etc.

# Florida Eligible Groups

- Section 627.653, F.S. – Employee Groups
- Section 627.654, F.S. – Labor Union, association, and small employer health alliance groups
- Section 627.655, F.S. – Debtor Groups
- Section 627.6551, F.S. – Teacher and Student Groups
- Section 627.656, F.S. – Additional Groups
- Section 627.659, F.S. – Blanket Health
- Section 627.663, F.S. – Franchise Health



# Florida 627.6516, F.S. – Trustee Groups

- Must be formed for the purpose of providing insurance
- The premium for the policy must be paid either wholly from the trust's fund or partly from the trust's fund and partly by the insureds
- The insurer shall designate a Florida-licensed agent of record on the certificate



# EXTRATERRITORIAL ISSUES

- What is Extraterritoriality?

The extent to which laws other than those of the “situs” affect the legality, validity, interpretation or operation of a group insurance policy.

# EXTRATERRITORIAL ISSUES

- What are the concerns? Insurers must be aware of ET requirements to maintain compliance
- With respect to eligible groups first look to the situs state ( where the group policy is issued) to ensure you have an eligible group
- ET authority typically addresses the delivery of the policy forms to residents of the state and the inclusion of mandated benefits of the product.
- However some states are clear they must approve the group first regardless if it is an o-o-state policy: Ex. MD



# EXTRATERRITORIAL ISSUES

- How to determine if ET requirements apply?  
Depends on:
  - Laws, Regulations, Bulletins, DOI Websites of the policy situs state
  - Laws, regs etc of the location of the group and individual insured
  - Type of group
  - Type of product and method of marketing
  - Unique industry filing experience

# Florida

## Extraterritorial =

## Out of State



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# Florida Out Of State Groups~ Is the filing exempt and how can I tell?

The policy has to be issued to one of the following:

- Employer group out of state for the benefit of their employees
- Out of state Association for the benefit of the members. The Association must have a constitution, charter and bylaws to be considered a viable association.
- A labor union group which is established for its members and it must also have a constitution and bylaws.
- Groups issued under Franchise health policies when the composition of the group is substantially in compliance with the franchise health requirements found at Section 627.663 F.S.
- Any groups eligible for life coverage and out of state.



# FLORIDA Out Of State Group

- Governed by Section 627.6515, Florida Statutes
- Prior to solicitation in FL, a copy of the master policy and a copy of the certificate evidencing coverage that will be issued to residents of this state shall be filed with the Office for informational purposes.
- Must provide certification from an officer of the company that the policy and certificates evidencing coverage have been reviewed and approved by the state in which the group policy is issued. **Will be reviewed for in-state compliance if certification is not provided.**



# Example

## Certification of Compliance Pursuant to Section 627.6515(5), F.S.

I, \_\_\_\_\_, do hereby truthfully certify to the Florida Office of Insurance Regulation, regarding form numbers:

\_\_\_\_\_ that prior to solicitation in Florida of any coverage utilizing said forms, said forms were reviewed and approved as required by the insurance department in the state in which the group policy was issued, which was the state of \_\_\_\_\_.

\_\_\_\_\_  
Signature of Company Officer

\_\_\_\_\_  
Date



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# FLORIDA Out Of State Group

- Applications must include the following statement in not less than 12-point type:

**“This policy is primarily governed by the laws of \_\_\_\_\_. As a result, all of the rating laws applicable to policies filed in this state do not apply to this coverage, which may result in increases in your premium at renewal that would not be permissible under a Florida-approved policy. Any purchase of individual health insurance should be considered carefully, as future medical conditions may make it impossible to qualify for another individual health policy. For information concerning individual health coverage under a Florida-approved policy, consult your agent or the Florida Department of Financial Services.”**



# FLORIDA Out Of State Group

- Certificates must include the following statement in not less than 10-point type :

**“The benefits of the policy providing your coverage are governed primarily by the law of a state other than Florida”.**





# Florida Filing Information:

- Pursuant to Rule 69O-149.023(4), F.A.C. the insurer shall submit a description of distribution systems (e.g. direct marketing, marketing through agents, marketing through financial or other institutions, etc.), and the intended target population for all product filings.
- Provide how product was filed in situs state. For example, group health disability income or group accident.
- Sample policy – this is a “John Doe” policy of what the consumer would receive





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Questions?

Answers

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**THANK YOU!**