

The Minnesota Flexible Benefits Health Insurance Law: Questions and Answers

This information brief summarizes a Minnesota law enacted in 2005 that allows small employers to buy group health coverage that does not include all mandated benefits otherwise required by state law. The information brief does not cover every detail of the new law, and employers should obtain advice from a knowledgeable insurance professional.

What is the new Minnesota law that affects small employer health plans?

The 2005 Legislature enacted a law permitting small employers to offer their employees a type of health plan called a flexible benefits plan. That law is [Laws 2005, chapter 132](#), section 15. It will be added to Minnesota Statutes as section 62L.056.

What is a flexible benefits plan?

A flexible benefits plan is an employee group health plan that does not cover all of the “mandated benefits” that the health plan would otherwise be required to cover under Minnesota law.

What are mandated benefits?

Mandated benefits are health care services that state law requires health plans to cover. For instance, state law requires employee health plans to cover the following:

- maternity care (prenatal care and delivery)
- cancer screening, such as mammograms, PAP smears, and Prostate Specific Antigen (PSA) testing
- preventive well-baby care with no enrollee cost-sharing
- emergency care
- diabetes test strips, insulin, and syringes
- hearing aids for persons under age 18
- Lyme disease
- removal of port wine stains
- mental health on an equal basis with other health care
- special food for persons born with phenylketonuria (PKU)
- hairpieces for people who lose all their hair due to alopecia areata and
- many other health care services

How many mandated benefits do Minnesota laws require?

This depends to some extent upon how one defines “mandated benefits.” For instance, one national association’s state-by-state chart shows Minnesota as having 27 mandated benefits.¹ The same type of chart published by another national group says Minnesota has 33 mandated benefits.²

Does the flexible benefits law apply to other types of mandates, such as those dealing with certain types of providers or persons?

Aside from mandating coverage of specific types of health care services, Minnesota law also contains other mandates:

- “Provider mandates” require coverage of care provided by types of providers, such as chiropractors, optometrists, podiatrists, and certain other non-physician providers, if the health condition and treatment involved is covered under the health plan and within the provider’s scope of practice.
- “Persons covered mandates” require coverage of former employees, former spouses of employees, newborn infants, adopted children, and disabled children who have

¹ Blue Cross and Blue Shield Association, *State Legislative Health Care and Insurance Issues: 2004 Survey of Plans*, December 2004, pages 74 and 78.

² Council for Affordable Health Insurance, *Health Insurance Mandates in the States, 2005*, January 2005, pages 4 and 6.

reached adulthood. Federal law also has some of those “persons covered mandates,” but Minnesota law goes beyond the federal requirements in some situations.

The flexible benefits law does not affect the provider mandates or persons covered mandates. Those mandates must still be complied with. The flexible benefits law affects only benefits mandates.

What is the advantage for an employer of buying a flexible benefits plan?

A flexible benefits plan offers the possibility of a lower cost to the insurer and therefore a lower premium to the employer, since the plan will not cover some mandated benefits. The employer may feel that some mandated benefits are worth the cost and that others are not. Some mandated benefits might be covered in almost all health plans, even if they were not required. Opinions differ on how much mandated benefits add to the cost of health coverage.

Did state law previously require all employee health plans in Minnesota to cover these mandated benefits?

No, state law cannot regulate the self-insured employee health plans often offered by large employers and multi-employer unions. State law can regulate only traditional employee health plans provided by insurers such as insurance companies, health maintenance organizations (HMOs), and Blue Cross and Blue Shield of Minnesota, in which the employer pays a fixed premium to the insurer in exchange for the insurer bearing the risk of paying for the health care covered by the health plan. If the employer or the union bears all the risk, federal law does not permit (preempts) state regulation of the health plan. Most small employers do use the traditional type of health plan that is subject to state law, and therefore the state mandated benefits laws do apply to them.

Who decides which benefits are covered by a flexible benefits plan?

The insurer will design its own plans to offer to employers, based upon which mandated benefits it thinks small employers will and will not want to cover. The insurer will want to offer plans that employers will want to buy. In other words, the market will decide which benefits are covered. Some insurers may offer just one flexible benefits plan, which may include some mandated benefits and exclude others. Some insurers may offer plans that allow employers to choose which mandated benefits to cover. The law permits insurers to “modify or exclude” a mandated benefit, so an insurer may design a plan that provides partial or limited coverage for a mandated benefit.

May an insurer offer a flexible benefits plan that is completely mandate-free?

Yes, except for a few mandated benefits required under federal law. Minnesota law cannot override federal law, so the federal mandates must be included. The federal mandates that apply to small employers are the following:

- Coverage for maternity care (This mandate applies only to employers that have 15 or more employees.)
- Breast reconstruction after surgery for breast cancer
- 48 hours of inpatient hospital stay after a vaginal childbirth (96 hours after a caesarean section). This requirement applies only if the plan covers maternity.

Are insurers required to offer flexible benefits plans?

No, it is voluntary for insurers to offer them. If an insurer does offer a flexible benefits plan, it must be available to all small employers on a guaranteed-issue basis, under the same rules that already exist in the small employer market in Minnesota. “Guaranteed issue” means an insurer cannot turn down a small employer for coverage unless the insurer’s network of health care providers does not include the employer’s geographic area.

How many employees can an employer have and still be a “small employer” that is eligible to buy a flexible benefits plan?

A “small employer” for purposes of Minnesota’s insurance laws is an employer that employs between two and 50 employees who work at least 20 hours per week and are eligible for health coverage under the employer’s rules.

How do employers and their employees know which mandated benefits are not covered in a flexible benefits plan?

The new law requires the insurer, prior to selling the plan to the employer, to give the employer a list of the mandated benefits not covered or modified under the plan. In addition, the law requires the insurer to make sure the employees are given a copy of that same list before the first date of coverage under the flexible benefits plan.

How does the state regulate these flexible benefits plans?

A flexible benefits plan must be approved by the Minnesota Commissioner of Commerce before it can be offered to employers. The new law provides that the commissioner cannot reject a proposed plan on the grounds that it does not include a mandated benefit. The plan must comply with all other laws that apply to small employer health insurance.

When does the new law permitting flexible benefit plans go into effect?

The law became effective June 4, 2005. Before a flexible benefits plan can be offered to employers, it must be filed with and approved by the Minnesota Commissioner of Commerce. As of October 15, 2005, no insurer had requested such approval.

For more information about insurance, visit the commerce area of our web site, www.house.mn/hrd/issinfo/comm_ed.htm.