SMALL EMPLOYER DEFINITION

This Bulletin is directed to all insurers issuing policies of accident and sickness insurance, as defined at IC 27-8-5-1; all HMOs as defined at IC 27-13-1-19; and all Hoosier employers purchasing accident and sickness insurance policies in the group market. The purpose of this Bulletin is to provide guidance on how Indiana will define a small group for purposes of providing employer health coverage.

Under the ACA, the definition of small employer was set to change effective January 1, 2016, and increase a small employer from one who employs one to 50 employees to one who employs one to 100 employees. However, the recently enacted PACE Act (H.R. 1624 – 114th Congress), prevents that change from happening. Unless a state chooses to define a small employer as having up to 100 employees, the definition of small employer will remain at one to 50 employees.

Indiana's small employer group health insurance law under IC 27-8-15-14(a) has long defined a small employer as one who employs up to 50 people.

> As used in this chapter, "small employer" means any person, firm, corporation, limited liability company, partnership, or association actively engaged in business who, on at least fifty percent (50%) of the working days of the employer during the preceding calendar year, employed at least two (2) but not more than fifty (50) eligible employees, the majority of whom work in Indiana. In determining the number of eligible employees, companies that are affiliated companies or that are eligible to file a combined tax return for purposes of state taxation are considered one (1) employer.

Indiana will continue to consider a small employer to be one who employs not more than 50 employees. However, a difference in how to count employees has caused confusion in the market; therefore, the Department will issue an emergency rule to conform Indiana's definition of an "employee" for determining group size to the federal definition.

Subject to Indiana emergency rulemaking authority granted in IC 27-8-15-14(b), the Department will define a small employer as one that employed an average of at least one but not more than fifty employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year. Following ERISA guidance, an employee is any individual employed by an employer but not an individual owner or partner. Part-time and seasonal employees should be counted. This rule will apply to any non-grandfathered, ACA-compliant plans with an effective date on or after January 1, 2016.

Previously, to avoid the disruptions that may have occurred with a change in the definition of a small employer, the Department issued Bulletin 215, which allowed for transitional policies for employers with 51-100 employees to continue through renewal no later than October 1, 2016. Because of the PACE Act, those policies will now continue to be large group policies. For that reason, Bulletin 215 is hereby withdrawn. However, those large group

policies with 51-100 employees issued in 2015 may be renewed until October 1, 2016. After that period, they must transition to a fully compliant ACA policy.

Another calculation determined by group size is medical loss ratio. In 2011 the Department issued Bulletin 185, which provided that groups of one to 100 employees were considered small group for purposes of calculating medical loss ratio (MLR). This policy will not change; therefore, for plan years beginning before January 1, 2016, premium rebate requirements of the ACA continue to apply in the small group market in Indiana only if the medical loss ratio is less than 80%. For plan years beginning on or after January 1, 2016, groups of 51+ employees will be considered large group for purposes of calculating the MLR.

Additional questions and examples are available within a small group FAQ found on the Department's web site. Questions regarding this Bulletin should be directed to *compliance@idoi.IN.gov*.

INDIANA DEPARTMENT OF INSURANCE

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