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COMMISSIONER

Bulletin No. 15-01

TO: All Tennessee Employers, Health Insurance Providers, Insurance Producers, Company Trade Associations, and Other Interested Parties

FROM: Julie Mix McPeak, Commissioner *Julie Mix McPeak*

RE: The Definition of Small Employer under the Patient Protection and Affordable Care Act

DATE: October 22, 2015

This Bulletin is being issued in response to the recent passage of the "Protecting Affordable Coverage for Employees Act" (PACE), signed into law on October 7, 2015. PACE amends the Patient Protection and Affordable Care Act (PPACA) and the Public Health Service Act (PHSA) by changing the Federal definition of both large employer and small employer under 42 U.S.C. 18024(b) as follows:

(1) LARGE EMPLOYER.

The term "large employer" means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least ~~101~~ **51** employees on business days during the preceding calendar year and who employs at least 1 employees on the first day of the plan year.

(2) SMALL EMPLOYER.

The term "small employer" means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 1 but not more than ~~100~~ **50** employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year.

Alternatively, PACE provides a State option to extend the previous definition of small employer as 1 to 100 employees. The Department takes the position that it is in the best interest of Tennessee consumers and the insurance industry to adhere to the Federal definition of small employer and large employer, as cited above, and will not apply the State option.

Pursuant to guidance issued by the Centers for Medicare and Medicaid Services (CMS) on October 19, 2015<sup>1</sup>, the definition of small employer for purposes of Medical Loss Ratio (MLR), risk corridors, and risk adjustment must follow the State definition, as selected above. However, the CMS guidance also stated that if “during a transition in the state definition of small employer from 100 employees to 50 employees, a small group policy is issued to a large employer, the experience of that large group employer should be reported with the small group market for that State for the purposes of those programs for the applicable reporting year.” The Department understands this guidance to mean that carriers may use a 1-100 definition of small employer for 2015 MLR purposes, but must use the 1-50 definition described above in subsequent years.

Any questions regarding this Bulletin should be directed to the Insurance Division’s Policy Analysis Section at 500 James Robertson Parkway, Davy Crockett Tower, 6<sup>th</sup> Floor, Nashville, Tennessee, 37243 and/or (615) 741-2825.

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<sup>1</sup> The Centers for Medicare & Medicaid Services (CMS), Center for Consumer Information and Insurance Oversight (CCIIO) released a FAQ on October 19, 2015, in which question number four addresses the issue of small employer definitions for purposes of medical loss ratio, risk adjustment, and risk corridor calculations. The guidance can be found at <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQ-on-the-Impact-of-the-PACE-Act-on-State-Small-Group-Expansion.pdf>.