



COMMONWEALTH OF MASSACHUSETTS
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DIVISION OF INSURANCE

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BULLETIN 2016-09

TO: Commercial Health Insurers; Blue Cross Blue Shield of Massachusetts, Inc.; and Health Maintenance Organizations Offering or Renewing Insured Health Products in Massachusetts

FROM: Daniel R. Judson, Commissioner of Insurance *Daniel R. Judson 8/10/16*

DATE: August 10, 2016

RE: Determining Whether an Employer is Eligible for Small Employer Coverage

The Division of Insurance (“Division”) issues this bulletin to inform Commercial Health Insurers, Blue Cross Blue Shield of Massachusetts, Inc. and Health Maintenance Organizations (“Carriers”) about the implementation of certain features of the federal Patient Protection and Affordable Care Act (“ACA”) according to guidance provided by the federal Centers for Medicare and Medicaid Services (“CMS”).

The PACE Act

The federal Protecting Affordable Coverage for Employees Act (“PACE Act”) amends certain of the provisions of the ACA and allows states, but does not require states, to subject employers with between 51 and 100 employees to small group health insurance rules. The Division has reviewed the PACE Act and confirms via this Bulletin 2016-09 that the provisions of M.G.L. c. 176J remain in effect and that Massachusetts' merged market will continue to apply only to individuals and employers with 50 or fewer employees.

Small Employers with Up to 50 Employees

When considering whether an employer should be considered a small employer with up to 50 employees (“Small Employer”) for the purpose of the guaranteed issue and rate restriction provisions of M.G.L. c. 176J and 211 CMR 66.00, Carriers shall derive a Full-Time Equivalent (“FTE”) count for employers based on the federal method for counting employees for purposes of employer eligibility for the Small Business Health Options Program (SHOP) according to the calculator at <https://www.healthcare.gov/shop-calculators-fte/>. As Carriers, brokers and employers are considering how to derive an FTE count, all of the employer’s staff – including seasonal and temporary staff, but excluding business owners and those holding more than 2% of stock ownership – should be considered.

In order to be consistent with the provisions of the ACA, Carriers shall no longer count employees according to the definition of “eligible employee” contained in M.G.L. c. 176J, §1. For all other purposes, the provisions of M.G.L. c. 176J remain in full force and effect.

An employer will be determined to be a Small Employer if the FTE count at the time of the proposed effective date of coverage is at least 1 but not more than 50.

If any employer that previously was considered an “eligible small business” or “group” under M.G.L. c. 176J becomes a large employer due to the change in method of counting employees set forth in this bulletin, then that employer shall be offered health insurance by merged-market Carriers as a large-employer group. No such employer that had merged market group health insurance during the 2015 or 2016 calendar years shall be denied an offer of large-group health insurance coverage by any merged-market Carrier through the end of the 2017 calendar year.

Coverage for a Small Employer with a Majority of Its Employees Living Outside Massachusetts

Within M.G.L. c. 176J, §1, an “eligible small business” or “group” is defined as “any sole proprietorship, firm, corporation, partnership or association actively engaged in business who, on at least fifty percent of its working days during the preceding year employed from among one to not more than fifty eligible employees, the majority of whom worked in the commonwealth ... In determining the number of eligible employees, a business shall be considered to be 1 eligible small business or group if: (1) it is eligible to file a combined tax return for purpose of state taxation, or (2) its companies are affiliated companies through the same corporate parent. ... An eligible small business that exists within a MEWA shall be subject to this chapter.” [Emphasis added]. With respect to the underlined portion of the definition, the federal government has opined that this is not permitted under federal ACA rules, and Carriers are to issue coverage to all eligible small employers based on a count of the employer’s employees wherever they may live. An insurance Carrier may restrict enrollment to those employees and dependents living within a plan’s service area, but cannot deny an entire employer from coverage based on the “50% rule.” When determining if a Small Employer satisfies a Carrier’s participation rate requirement, a Carrier shall derive the participation rate by factoring in only those employees who are eligible to enroll based on the plan’s service area.

If you have any questions, please contact Kevin Beagan, Deputy Commissioner of the Health Care Access Bureau within the Division of Insurance at (617) 521-7323.