

Advisory Memorandum

To: All Insurers of Non-grandfathered Non-transitional Health Benefit Plans in the Small Group Market

From: NCDOI/Life & Health Division

Date: October 30, 2015

Re: Definition of Small Employer and Previously Approved Forms/Rates

A. Definition of Small Employer (Group) Effective January 1, 2016

NC Session Law 2013-357 revised, effective January 1, 2016, the North Carolina definition of small employer by expanding the group size from 50 to 100 to conform to the Affordable Care Act (ACA), P.L. 111-148, as amended ("ACA"). The passage of the federal Protecting Affordable Coverage for Employees (PACE) Act repeals the expanded group size (from 50 to 100 employees which was to be effective January 1, 2016) found in the federal law, but still provides states with the flexibility to use 100 as the upper limit. With the adoption of House Bill 361 (NC Session Law 2015-281 – effective January 1, 2016), which ties NC's definition of small employer to the federal definition, the North Carolina definition of small employer (group) for non-grandfathered non-transitional health benefit plans shall be:

NCGS § 58-50-110. Definitions.

"(22b) "Small employer" means, in connection with a nongrandfathered nontransitional group health plan with respect to a calendar year and a plan year, an employer who meets the definition of small employer under 42 U.S.C. § 18024(b). The number of employees shall be determined using the method set forth in section 4980H(c)(2) of the Internal Revenue Code."

This means that as of January 1, 2016, for non-grandfathered non-transitional business, the definition of small employer shall be defined as an employer with 1 to 50 employees consistent with the definition found in 42 U.S.C. § 18024(b).

HB 361 (Session Law 2015-281) was signed by the governor on October 22, 2015. Please refer to Part IV – Section 12 of the bill which can be accessed here:

<http://www.ncga.state.nc.us/Sessions/2015/Bills/House/PDF/H361v4.pdf>

B. Previously Approved Form and Rate Filings in the Small Group and Large Group Markets

Prior to October 22, 2015, insurers have submitted and NCDOL approved/accepted health insurance form filings and rate filings for use in the small and large group health insurance markets which may have used the pre-PACE Act/HB361 definitions of small and large employers. The PACE Act's subsequent change in the federal law and the adoption of House Bill 361 (NC Session Law 2015-281) may have an impact on those filings. In light of these changes, the Life & Health Division will allow for revisions to previously approved regulatory submissions as follows:

1) Form Filings

Insurers may administratively modify any previously approved insurance form without receiving the Life & Health Division's prior approval. This includes changes to the definition of a small group or large group that may be found in group insurance policies, group master contracts, certificates, booklets, evidences of coverage, applications, and/or enrollment forms.

Insurers are asked to submit the revised form(s) in an informational filing and should clearly indicate the purpose of the submission in the general information tab. The submission must include a certification from the company that certifies that no changes other than to the size of a small employer group were made to the form(s).

2) Single Risk Pool Rate Filings for Plan Year 2016 in the Small Group Market

While insurers have used a definition of small employer with an upper limit of 100 when developing the rates in their 2016 Plan Year Single-Risk Pool rate filings and the change in definition may impact such rates, the rates for the first quarter 2016 are locked down and cannot be changed.

Insurers may request revisions for these products to be effective April 1, 2016 if submitted to NCDOL for review no later than January 1, 2016, unless the insurer participates on the Federally Facilitated SHOP. Second quarter rate revisions for SHOP insurers should be submitted according to any federal deadlines.

Insurers should follow the 2016 Plan Year Single-risk Pool Rate Filing submission processes as provided by the Life & Health Division. Insurers are also reminded that quarterly changes to small group rates must be submitted to CMS/CCIIO at the same time that such filings are submitted to the State.

3) Rate Filings in the Large Group Market

Insurers wishing to revise previously approved/accepted large group rates may request revisions to those submissions. For the revisions to be effective January 1, 2016, the insurer must submit the revisions for NCDOL review (and prior approval if applicable) no later than November 15, 2015. Insurers may submit filings with later implementation dates according to their own timelines while being mindful to provide NCDOL adequate time for review.

Insurers should follow all regular rate revision submission processes applicable to the insurer and its products, including required supporting information and certifications.

C. Guidance from CCIIO relating to the PACE Act

On October 19, 2015, CCIIO has issued guidance relating to the impact of the federal PACE Act on state small group expansion. You are encouraged to review the guidance which may be located here:

<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>

Any questions relating to this memorandum should be addressed to Jean Holliday at jean.holliday@ncdoi.gov or (919) 807-6061.