



# South Carolina Department of Insurance

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## BULLETIN NUMBER 2015-08

TO: All Insurers Licensed to Transact Accident and Health Insurance Business within the State of South Carolina and All South Carolina Licensed Health Maintenance Organizations (collectively “Health Insurance Issuers”)

FROM: Raymond G. Farmer  
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SUBJECT: Impact of the PACE Act on the Small Group Market

DATE: October 30, 2015

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On October 7, 2015, the President signed into law [H.R. 1624 \(Public Law 114-60\)](#), the Protecting Affordable Coverage for Employees Act (PACE Act). The PACE Act amends Section 1304(b) of the Patient Protection and Affordable Care Act (ACA) and Section 2791(e) of the Public Health Service Act to revise the definition of small employer for purposes of the market reforms under Title I of the ACA and Title XXVII of the Public Health Service Act.

The PACE Act effectively repeals the provision in the ACA that would have expanded the small group market to 1-100 for policy years beginning on or after beginning January 1, 2016. Instead, the federal definitions will remain consistent with the state’s definitions and, as such, South Carolina’s statutes that define small employers and, by extension, the small group market, will no longer be preempted.

### *Federal Definitions of Small and Large Employers*

The PACE Act revises the definitions of large and small employers under 42 U.S.C. 18024(b) as follows (with notations of language that has been ~~stricken~~ and language that has been inserted):

- (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 employee 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.

## South Carolina's Individual, Small Group, and Large Group Markets

Chapter 71, Title 38 of the South Carolina Code of Laws provides for various definitions relating to employers and the individual, small group, and large group markets and include, in pertinent part:

“Employer” has the meaning given the term under Section 3(5) of the Employee Retirement Income Security Act of 1974, except that the term includes only employers of two or more employees. (emphasis added) See S.C. Code §§ 38-71-670(4) and 38-71-840(A)(8).

"Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan. The term includes coverage offered in connection with a group health plan that has fewer than two participants as current employees on the first day of the plan year unless the State elects to regulate coverage as coverage issued to small employers as defined in Section 38-71-1330. (emphasis added) See S.C. Code §§ 38-71-670(11) and 38-71-840(A)(20).<sup>1</sup>

"Large group market" means the health insurance market under which individuals obtain health insurance coverage, directly or through any arrangement, on behalf of themselves and their dependents through a group health plan maintained by an employer that is not a small employer, as defined in Section 38-71-1330. See S.C. Code §§ 38-71-670(12) and 38-71-840(A)(21).

“Small group market” means the health insurance market under which individuals obtain health insurance coverage, directly or through any arrangement, on behalf of themselves and their dependents through a group health plan maintained by a small employer, as defined in Section 38-71-1330. See S.C. Code §§ 38-71-670(16) and 38-71-840(A)(29).<sup>2</sup>

“Small employer” means , in connection with a health insurance plan with respect to a calendar year and a plan year, any person, firm, corporation, partnership, association, or employer, as defined in Section 3(5) of the Employee Retirement Income Security Act of 1974, that is actively engaged in business that, on at least fifty percent of its working days during the preceding calendar year, employed no more than fifty eligible employees or employed an average of 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. (emphasis added) See S.C. Code § 38-71-1330(18).

When read together, the above statutes result in the small group market consisting of employers with 2 to 50 eligible employees. This is consistent with the state’s current treatment of the small group market and, due to passage of the PACE Act, is no longer preempted by federal law.

**Accordingly, the small group market will continue to include employers with 2-50 employees and the large group market will continue to consist of employers with 51+ employees.**

### Employee Counting Methodologies for Purposes of Determining Group Size

For policies issued on the Federally-facilitated SHOP, the ACA full-time equivalent employee (FTE) method of counting employees will continue to apply. See 45 CFR 155.20 and CMS [FAQs on the Impact of PACE Act...](#) (October 19, 2015).

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<sup>1</sup> The definitions of individual market and small group market are as amended via SCDOI Bulletin 2011-11.

<sup>2</sup> *Id.*

For all other policies, the determination of whether an employer is a small employer or large employer for purposes of issuing group health insurance coverage should be made using the South Carolina Code provisions for counting eligible employees found in S.C. Code §§ 38-71-920 and 38-71-1330.

### **Employer Size & Employee Counting Methodologies for MLR, Risk Corridors, and Risk Adjustment Reporting Purposes**

The definition of a small employer for purposes of MLR, risk corridors, and risk adjustment will follow the state's definition (2-50). However, the PACE Act did not change the requirement that group health insurance issuers utilize the FTE counting methodology for the MLR, risk adjustment, and risk corridors programs. See CMS [FAQs on the Impact of PACE Act...](#) (October 19, 2015).

### **Revisions to Form Filings**

In light of the PACE Act, group health insurance issuers may need to make revisions to their policy forms. In order to reduce compliance challenges, the Department will not require filings to revise bracketed language on previously-approved forms or to amend a Statement of Variability (detailing bracketed language in a form). If an issuer's forms necessitate substantive changes resulting from the PACE Act, the Department will attempt to expedite the review process. Issuers may request that a previously approved filing be reopened or submit a new filing to make these changes. Issuers should email [lahmail@doi.sc.gov](mailto:lahmail@doi.sc.gov) in order expedite this process. For requests to reopen, issuers should include the State Tracking Number associated with the previously approved form filing; if an issuer elects to submit a new filing to make the requested changes, the issuer should provide the State Tracking Number assigned to this new form filing via email so that we may flag it for expedited review. For new filings, issuers should also note that the filing is to make amendments due to the PACE Act in the filing description.

### **Revisions to Rate Filings**

Generally, the South Carolina Department of Insurance permits health insurance issuers writing in the small group market to implement quarterly rate changes as long as these changes are included in the issuer's annual rate submission (as approved). Because these quarterly changes could be effected through an issuer's annual filing, the Department does not permit semi-annual or quarterly rate filings.

The Department previously adopted transitional relief for large employers that would have been redefined as small employers on January 1, 2016. That transitional relief, which was adopted via Bulletin 2014-05, allowed group health insurance issuers to continue to renew large group coverage for employers with 51-100 employees through October 1, 2016. For this reason, we do not anticipate that reverting to the state's existing definitions should have a material effect on rates previously approved for small group coverage that will become effective on or after January 1, 2016 (2016 SG Plans). Accordingly, the Department does not anticipate a need to permit semi-annual or quarterly rate filings to amend the rates for 2016 SG Plans from those that were previously filed and approved.

### **Questions**

Questions regarding this bulletin should be submitted via email to [lahmail@doi.sc.gov](mailto:lahmail@doi.sc.gov) and include the company name and primary point of contact (with phone number and email address) for follow up.

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