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Bulletin 409

Counting Employees in the Group Health Insurance Market

The purpose of this Bulletin is to provide Maine health insurance carriers with guidance on counting employees for determining whether an employer is eligible for coverage in Maine's group market as a small employer or as a large employer.

Both Maine law and the federal Affordable Care Act (ACA) require carriers in the small group market to offer coverage to all employers with 1 to 50 employees.¹ However, the standard for counting employees established under Maine law before the ACA differs from the ACA standard in its treatment of working owners, part-time employees, and seasonal employees. If there is an irreconcilable conflict between state and federal definitions of the small group market, the federal definition controls, because Title 24-A M.R.S.A § 4309-A requires carriers to comply with all applicable requirements of the federal Affordable Care Act, and the ACA preempts state laws that prevent the application of ACA requirements.

One mechanism established by the ACA to make coverage available to small employers is the Small Business Health Options (SHOP) Exchange. Regulations promulgated under the ACA require carriers offering small group health plans on the SHOP Exchange to determine eligibility by using a specific full-time equivalent (FTE) counting methodology for part-time employees.² At this time, the Centers for Medicare and Medicaid Services (CMS) interprets federal law as permitting states to use any reasonable method for determining group size for coverage issued off the SHOP Exchange, provided that it accounts for part-time employees.

The Superintendent has considered the methodologies used or suggested by carriers doing business in the Maine small or large group market, and the most reasonable methodology that accounts for part-time employees is the SHOP methodology.³ Those carriers that offer small group plans both on and off the SHOP Exchange are required to include all such plans in a single risk pool. Applying an inconsistent counting methodology off the SHOP Exchange would

¹ 24-A M.R.S.A. § 2808-B; Pub. Health Serv. Act §§ 2702(a) & 2791(e)(4), as amended by PACE Act, P.L. 114-60.

² 45 CFR § 155.20 (definition of "small employer").

³ The pre-ACA methodology set forth in the Insurance Code at 24-A M.R.S.A. §§ 2808-B(1)(C) & (D) does not adequately account for part-time employees because the employer is given the discretion to choose whether part-time employees are counted as "eligible employees."



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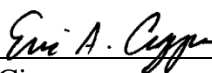
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diminish the integrity of that risk pool, and it would prevent a level playing field between carriers offering coverage on the SHOP Exchange and carriers that are only offering large group coverage, or are offering small group coverage only off the SHOP Exchange. In addition, using a single counting methodology across the entire group market makes it easier for carriers, employers, producers, and the public to determine which employers are entitled to small group coverage and which employers are entitled to large group coverage.⁴

If a carrier has used a different counting methodology before the issuance of this Bulletin, all employers with in-force policies are entitled to maintain that coverage until the end of the current policy term,⁵ and carriers may honor all outstanding offers of small or large group coverage. For employers with no offer of coverage outstanding or in process, carriers should transition to consistent application of the ACA counting methodology at the earliest feasible date, and no later than offers of new or renewal coverage effective on or after February 1, 2016.

November 9, 2015



Eric A. Cioppa
Superintendent of Insurance

NOTE: This Bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties, or privileges, nor is it intended to provide legal advice. Readers should consult applicable statutes and rules and contact the Bureau of Insurance if additional information is needed.

⁴ A consistent definition of the small group market is also important when interpreting related laws that distinguish between the small and large group insurance markets. For example, 24-A M.R.S.A. § 2803-A(4) exempts carriers from providing loss information to employers that are eligible for “small group coverage pursuant to section 2808-B.” The phrase “pursuant to section 2808-B” refers to eligibility for guaranteed issue of community-rated coverage, not to a specific counting methodology.

⁵ An employer that is currently covered through the SHOP Exchange remains eligible for SHOP coverage even if its size increases to more than 50 employees, pursuant to PPACA § 1304(b)(4)(D), as long as it maintains continuous coverage through the Exchange.