



LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON
COMMISSIONER

BULLETIN 2015-07

TO: HEALTH INSURANCE ISSUERS, HEALTH MAINTENANCE ORGANIZATIONS, AND HEALTH & ACCIDENT PRODUCERS

FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE

RE: TRANSITIONAL RELIEF REGARDING SMALL GROUP SIZE

DATE: OCTOBER 12, 2015

I. Background & Legislative Action

On March 23, 2010, the President signed into law the Patient Protection and Affordable Care Act, Pub. L. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152, together referred to as the Affordable Care Act. Section 1304(b), 42 U.S.C. 18024(b), of that Act included a provision that amended Public Health Service Act section 2791, 42 U.S.C. 300gg-91(e), to define small employers. The definition of "small employer" in the Public Health Service Act, as amended on March 23, 2010, reads as follows:

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 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year.

The above definition of "small employer" was to take effect on January 1, 2016. In preparation for this change in federal law, the Louisiana Legislature amended health rating laws within the Louisiana Insurance Code, Title 22 of the Louisiana Revised Statutes of 1950, to mirror this change in the Public Health Service Act. La. R.S. 22:1091(B)(22) was amended and re-enacted by Act 718 of 2014 to read as follows:

"Small group" or "small employer" means any person, firm, corporation, partnership, trust, or association actively engaged in business which has employed an average of at least one but 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, and beginning on January 1, 2016, an employer who employed an average of at least one but not more than one hundred employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year. "Small group" or "small employer" shall include coverage sold to small groups or small employers through associations or through a blanket policy. For purposes of rate calculation by a health insurance issuer, a small employer group consisting of one employee shall be rated

within a health insurance issuer's individual market risk pool, unless that health insurance issuer provides only employer coverage and thus has only a small group market risk pool.

Similarly, La. R.S. 22:1091(B)(13), which defines "large employer" was amended by Act 718 of 2014 to change the definition of large employers, effective on January 1, 2016, to be consistent with the change in the definition of "small employer".

On October 7, 2015, the President signed into law the Protecting Affordable Coverage for Employees Act ("PACE" Act), Pub. L. 114-60, following outcry by vast segments of the U.S. business community that the inclusion of employers with between 51 and 100 employees in the small group market would drive up the costs of health insurance for those groups and make their compliance with provisions of the Affordable Care Act both costly and destabilizing. The PACE Act repealed the original change in the definitions of small employer and large employer that were adopted in the Affordable Care Act in 2010 so that small employers would continue to be capped at 50 employees, rather than 100 employees. However, the PACE Act amended section 2791(e) of the Public Health Service Act, 42 U.S.C. 300gg-91(7) to include the following state option:

State Option to Extend Definition of Small Employer.—Notwithstanding paragraphs (1) and (2), nothing in this section shall prevent a State from applying this subsection by treating as a small employer, 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 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year.

Because the State of Louisiana, through Act 718 of 2014, amended the definitions of small employer and large employer to reflect the original amendments contained within the Affordable Care Act, the State Option contained within the PACE Act would mean that the definition of small employer as codified in La. R.S. 22:1091, which defines a small employer to include employers with 1-100 employees, would still be effective for rating purposes in the state of Louisiana on January 1, 2016.

For non-rating purposes, the definitions of "small employer" and "large employer" codified in La. R.S. 22:1061 remain effective. La. R.S. 22:1061 contains the definitions for Subpart C of Part III of Chapter 4 of Title 22 of the Louisiana Revised Statutes of 1950, which is entitled "Assuring Portability, Availability, Renewability of Health Insurance Coverage", often referred to as the "HIPAA section" of the Code. Bulletin 2013-02, which addresses the issue of "small employer" following the enactment of the Affordable Care Act, gives guidance concerning the interpretation and enforcement of the definition of "small employer" in light of section 3(6) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002.

Act 718 of 2014 contained a provision, codified as La. R.S. 22:1095(F), which reads as follows:

Any rate proposed to be used by a health insurance issuer shall be submitted and controlled by this Subpart. However, the commissioner shall have the authority to grant transitional relief from the provisions of this Subpart.

The Subpart for which the commissioner has the authority to grant transitional relief includes La. R.S. 22:1091, which contains the definitions of small employer and large employer for rating purposes. Bulletin 2014-04, issued on April 22, 2014, and Bulletin 2015-03, issued on February 23, 2015, already granted limited transitional relief to large employers that would have been redefined as small employers on January 1, 2016; that relief allowed large employers with between 51 and 100 employees to temporarily maintain their large group policies if such policies were renewed on or before October 1, 2016.

II. Transitional Relief

By the authority vested in me pursuant to La. R.S. 22:1095(F), I do hereby give notice to all issuers and producers of health & accident coverage that I am granting transitional relief from the provisions of Subpart D, of Part III of Chapter 4 of Title 22 of the Louisiana Revised Statutes of 1950, La. R.S. 22:1091-1099, to wit—

A. Issuers shall utilize the definitions of “small employer” and “large employer” as enacted by the PACE Act and codified in Public Health Service Act section 2791(e), 42 U.S.C. 300gg-91 and PPACA Section 1304(b), 42 U.S.C. 18024(b), and as codified in La. R.S. 22:1061.

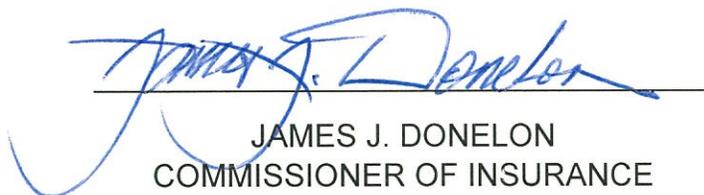
The clear result of this transitional relief is that the definition of small employer in the state of Louisiana on January 1, 2016, for both rating and non-rating purposes shall extend only to those employers that employ an average of at least 1 but not more than 50 employees on business days during the preceding calendar year and who employ at least 1 employee on the first day of the plan year.

B. The transitional relief granted herein pursuant to La. R.S. 22:1095(F) shall be effective for any policy or plan renewed, issued, or issued for delivery on or before December 31, 2016.

C. Certain provisions of the Louisiana Insurance Code require issuers to give notices to policy holders and enrollees within minimum amounts of time. Because the PACE Act amendments to the definitions of small employer and large employer were enacted after issuers may have already begun or completed the process of notifying policyholders and enrollees, any issuer that in good faith undertakes compliance with such provisions as soon as practicable, will not be sanctioned for reasonable good faith efforts to comply with such provisions of law. This enforcement safe harbor will not extend

to an issuer in situations where a policyholder's health plan was unaffected by the amendments enacted by the PACE Act.

Baton Rouge, Louisiana, the 12th day of October 2015.



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COMMISSIONER OF INSURANCE