

**BULLETIN 2017-02**

**CHANGES TO DEFINITION OF “SMALL EMPLOYER” AND “LARGE EMPLOYER”  
FOR PURPOSES OF MEDICAL LOSS RATIO (“MLR”) REPORTING AND REBATE  
REQUIREMENTS UNDER 45 C.F.R. PART 158 BEGINNING WITH THE 2017  
REPORTING YEAR**

**Effective January 1, 2017**

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On December 1, 2010, the U.S. Department of Health and Human Services (“HHS”) adopted interim final regulation 45 CFR 158.103 to address MLR reporting and rebate requirements. The regulation defined “small employer” as having “an average of at least 1 but not more than 100 employees on business days during the preceding calendar year” and “large employer” was defined as having “an average of at least 101 employees on business days during the preceding calendar year . . . .”

Section 1304(b)(3) of the Affordable Care Act (“ACA”) provided exceptions to these definitions, however, and gave states the option to substitute “50 employees” for “100 employees” in the definition of “small employer,” and “51 employees” for “101 employees” in the definition of “large employer” until 2016. Additionally, the Center for Consumer Information and Insurance Oversight provided guidance on May 13, 2011 (CCIIO 2011-002) allowing states to increase the upper limit of the definition of “small employer” for MLR reporting purposes only. In light of this, and as outlined in Ohio Department of Insurance Bulletin 2011-09, the Ohio Department of Insurance (“Department”) defined “small employer” as an employer with 1 to 100 employees, and “large employer” as 101 employees and above for purposes of federal MLR reporting and rebate requirements only.

On October 7, 2015, the Protecting Affordable Coverage for Employees Act (“PACE Act”) was enacted. The PACE Act amended Section 1304(b) of the Affordable Care Act (“ACA”) and section 2791(e) of the Public Health Service Act to revise the definition of “small employer” to “an employer who employed an average of at least 1 but not more than 50 employees on business days during the preceding calendar year” and to revise the definition of “large employer” to “an employer who employed an average of at least 51 employees on business days during the preceding calendar year . . . .” The PACE Act also provided states with the option to extend the definition of small employer to include employers with up to 100 employees. The Department issued Bulletin 2015-04 to outline the definitions of small and large employer based on existing Ohio insurance law.

As addressed by HHS in its answers to “Frequently Asked Questions on the Impact of PACE Act on State Small Group Expansion” dated December 17, 2015, the definition of “small employer” that a state selects must be applied uniformly to all ACA programs. Accordingly, beginning with the 2017 MLR reporting year, states are no longer permitted to increase the upper limit of the definition of small employer for MLR reporting purposes only.

Therefore, as a result of the federal guidance and existing Ohio law, effective with the 2017 reporting year, “small employer” means an employer who employed 1 to 50 employees on business days during the preceding calendar year and “large employer” means an employer who employed 51 and above employees on business days during the preceding calendar year. These definitions are applicable for purposes of MLR reporting beginning with the 2017 reporting year. If amendments to prior MLR reporting years are necessary, such amendments should be made in accordance with the definitions outlined in Bulletin 2011-09, which remains applicable through reporting year 2016.



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