



South Carolina Department of Insurance

300 Arbor Lake Drive, Suite 1200
Columbia, South Carolina 29223

Mailing Address:
P.O. Box 100105, Columbia, S.C. 29202-3105
Telephone: (803) 737-6160

MARK SANFORD
Governor

ERNST N. CSISZAR
Director of Insurance

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To: All Insurers Licensed to Transact Accident and Health Insurance Business within the State of South Carolina, All South Carolina Licensed Health Maintenance Organizations (HMOs), and All Other Interested Parties

From: Ernst N. Csiszar
Director 

Re: Determining group size for the purposes of health insurance coverage and mental health parity

Date: May 5, 2003

I. Purpose

The purpose of this memo is to clarify the definitions of "small employer" when determining group size for health insurance coverage and mental health parity.

II. Background

South Carolina Code of Laws § 38-71-1330 (17) ("Guaranteed Availability") defines a small employer as "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 50 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). South Carolina Code of Laws § 38-71-1330 (6) defines an eligible employee as "an employee as defined in 38-71-710(1) or 38-71-840 who works on a full-time basis and has a normal work week of thirty or more hours." The underlined portion of this definition was added in 1997 to incorporate the provisions of the Health Insurance Portability and Accountability Act (HIPAA) into the South Carolina Code of Laws.

South Carolina Code of Laws § 38-71-880 (C)(1)(b) ("Mental Health Parity") defines a small employer as "in connection with a health insurance plan with respect to a

calendar year and a plan year, an employer who employed an average of at least two but not more than 50 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year.” This definition was added in 1997 to incorporate the Mental Health Parity Act into the South Carolina Code of Laws.

Accordingly, the Guaranteed Availability section allows an employer to meet one of two definitions to be included under the small employer definition. However, the Mental Health Parity section only has one definition for an employer to be considered a small employer.

III. Counting Employees to Determine Group Size for Guaranteed Availability

When determining whether an employer is a small employer, a carrier should analyze whether the employer meets either the first definition or the second definition under South Carolina Code of Laws § 38-71-1330 (17). Accordingly, the employees described in the following examples are all small employers under this section:

Example #1: An employer employs 40 full-time employees and 20 part-time employees. Full-time employees are eligible for health insurance coverage. (Note: Part-time employees work less than thirty hours a week.)

Answer: In this example, the employer is a small employer because it meets the first definition under South Carolina Code of Laws § 38-71-1330 (17). Specifically, although the employer has 60 employees, it is a small employer since it has no more than 50 eligible employees.

Example #2: An employer employs 10 full-time employees and 10 part-time employees. Full-time employees are eligible for health insurance coverage.

Answer: In this example, the employer is a small employer because it meets both of the definitions under South Carolina Code of Laws § 38-71-1330 (17). Specifically, the employer is a small employer because it has no more than 50 employees and no more than 50 eligible employees.

Example #3: An employer has one part-time employee and one full-time employee. Full-time employees are eligible for health insurance coverage.

Answer: In this example, the employer is a small employer because it meets the second definition under South Carolina Code of Laws § 38-71-1330 (17). Specifically, the employer is a small employer because it employs at least one employee. (Note: A carrier does not have to write coverage for this small employer if, on the first day of the plan year, the plan had fewer than two participants who are current eligible employees and because South Carolina Code of Laws § 38-71-1340 only requires guaranteed availability for a small employer of 2 to 50 employees.)

IV. Counting Employees to Determine Group Size for Mental Health Parity

When determining whether an employer must comply with South Carolina Code of Laws § 38-71-880 (Mental Health Parity), an employer should analyze whether it meets the definition of a small employer under South Carolina Code of Laws § 38-71-880 (C)(1)(b). Accordingly, the following examples state whether the previous examples above would be small employers under this section:

Example #1: An employer employs 40 full-time employees and 20 part-time employees. Full-time employees are eligible for health insurance coverage.

Answer: In this example, the employer is not a small employer because it does not meet the definition under South Carolina Code of Laws § 38-71-880 (C)(1)(b). Specifically, since the employer has 60 employees, it is a large employer for the purposes of mental health parity. Accordingly, although the employer is a small employer for the purposes of guaranteed availability, the coverage must include mental health coverage under South Carolina Code of Laws § 38-71-880.

Example #2: An employer employs 10 full-time employees and 10 part-time employees. Full-time employees are eligible for health insurance coverage.

Answer: In this example, the employer is a small employer because it meets the definition under South Carolina Code of Laws § 38-71-880 (C)(1)(b). Specifically, the employer is a small employer because it has no more than 50 employees. Therefore, the employer does not have to provide coverage for mental health coverage.

Example #3: An employer has one part-time employee and one full-time employee. Full-time employees are eligible for health insurance coverage.

Answer: In this example, the employer is a small employer because it meets the definition under South Carolina Code of Laws § 38-71-880 (C)(1)(b). Specifically, the employer is a small employer for the purposes of mental health parity because it employs at least two employees. Therefore, the employer does not have to provide coverage for mental health. (Note: A carrier does not have to write coverage for this small employer if, on the first day of the plan year, the plan had fewer than two participants who are current eligible employees and because South Carolina Code of Laws § 38-71-1340 only requires guaranteed availability for a small employer of 2 to 50 employees.)

V. Conclusion

Once it is determined that a group's size is that of a small employer, a carrier should determine a group's eligible employees under South Carolina Code of Laws § 38-71-1330 and a carrier should rate the group in accordance with South Carolina Code of Laws § 38-71-920. For further questions, please contact Ann Bishop at 803-737-6165 or abishop@doi.state.sc.us.