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MEMORANDUM 2015-3H

Date: October 30, 2015

To: All Health Insurance Companies, Mutual Benefit Societies, and Health Maintenance Organizations Authorized to Write Health Insurance in Hawaii

From: Gordon I. Ito, Insurance Commissioner

Subject: PACE Act, H.R.S. Section 431:2-201.5(b), and the definitions of small and large employers

On October 7, 2015, President Obama signed H.R. 1624, the Protecting Affordable Coverage for Employees Act ("PACE Act"). With the enactment of the PACE Act, federal law that would have increased the number of employees in the definition of small employer to 100 or less has been repealed. Instead, the definition will remain consistent with Hawaii's definition of a small employer.

The PACE Act changes the federal definition of both large employer and small employer under 42 U.S.C. 18024(b) as follows:

(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 2 employees 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.

Hawaii law is consistent with the new federal definition. Under H.R.S. Section 431:2-201.5(b), small employer is defined as:

"Small employer" means, with respect to a calendar year and a plan year, an employer that 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.

Rate Filing

Insurers who filed small group rate changes did so before May 15, 2015. Since the definition of what constitutes a small employer has changed, these rate filings, which may have included the single risk pool filings for groups 1-100, may no longer reflect an insurer's experience. Insurers, however, may not re-file 2016 first quarter rates. Insurers may file appropriate changes for the second quarter rate filing.

Under the 2016 Unified Rate Review Instructions, SHOP exchange quarterly rate changes must be submitted at least 105 days prior to the effective date of the rate change. Quarterly submissions must be finalized at least 45 days prior to the effective date. As a result, insurers must file any proposed second quarter changes by December 17, 2015. Insurers are not required to make changes to their second quarter rates. Insurers who have questions on rate changes should contact (808) 586-2804.

If you have any questions, please e-mail ihealth@dcca.hawaii.gov.