



PUBLIC PROTECTION CABINET

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The following guidance is to advise the reader of the current position of the Kentucky Department of Insurance (“the Department”) on the specified issue.

FROM: SHARON P. CLARK, COMMISSIONER
TO: INSURERS OFFERING GROUP HEALTH BENEFIT PLANS
RE: COUNTING EMPLOYEES TO DETERMINE GROUP SIZE
DATE: JUNE 10, 2020

The Kentucky Department of Insurance (“Department”) issues this guidance pursuant to Executive Order 2020-220, State of Emergency Relating to Insurance. On March 9, 2020, Governor Andy Beshear issued Executive Order 2020-220 giving the Commissioner of Insurance the authority to temporarily waive, suspend, and/or modify the operation of any statute or administrative regulation currently in place under the purview of the Kentucky Department of Insurance in order to best serve the interest of the public health, safety, and welfare during the state of emergency related to COVID-19 declared on March 6, 2020.

Pursuant to KRS 304.17A-005, a “small group” means an employer with two (2) to fifty (50) employees, and a “large group” means an employer with fifty-one (51) or more employees. The Department recognizes that Kentucky employers may have furloughed employees or laid off employees as a result the COVID-19 state of emergency, and this could impact whether an employer is considered a small group or a large group for the purpose of the employer’s group health plan.

In accordance with discussions between state regulators and staff from the Centers for Medicare and Medicaid Services (CMS) and the United States Department of Labor, group size should be determined based on the average number of employees over the past year. Further, furloughed employees should be counted as employees, while employees who have been laid off should not be counted for the purpose of determining group size. Renewals of group health benefit plans should be considered in accordance with this guidance.

Nothing in this guidance is intended to remove an employer’s choice to cancel a specific health benefit plan in accordance with the terms of the policy or to choose to offer a new health benefit

plan to its employees in a specific market segment (small group or large group) if the number of employees on the date of issuance supports that choice.

/s/ Sharon P. Clark

Sharon P. Clark, Commissioner
Kentucky Department of Insurance