



**The State of New Hampshire
Insurance Department**
21 South Fruit Street, Suite 14
Concord, NH 03301

Roger A. Sevigny
Commissioner

Alexander K. Feldvebel
Deputy Commissioner

BULLETIN

Docket No.: INS NO.09-066-AB

TO: All Companies Licensed to Sell Health Insurance

FR: Roger A. Sevigny
Insurance Commissioner 

DATE: December 1, 2009

RE: Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA)

The Department has fielded a number of questions from employers, producers and carriers relative to how the number of employees should be counted for the purpose of determining whether the group is a small employer or a large employer for benefit compliance under MHPAEA effective for plan years beginning October 3, 2009.

Bulletin INS NO 05-033-AB issued in 2005 provided guidance for counting employees for the purpose of classifying the employer group as a large or small employer under New Hampshire law. The counting method required by this bulletin expanded the protections afforded to groups who had 50 or more employees but fewer than 50 eligible employees. The Bulletin explains the steps in determining employer group size under HIPAA as follows:

“...Under HIPAA a small employer group is defined as “an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employed at least 2 employees on the first day of the plan year.” In Program Memorandum 00-05, the federal Department of Health and Human Services stated that the “the term ‘employee’ has the meaning given such term under section 3(6) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA).”¹ Under section 3(6) of ERISA the term ‘employee’ means any individual employed by an employer.

¹ See section 2791 (d)(5) (42 U.S.C. § 300gg-91 (d)(5)), and the regulation at 45 CFR §144.103.

As the referenced bulletin indicates, there may be instances where a small employer group under New Hampshire law is classified as a large group according to federal law. When this occurs, the employer group is obligated as a large employer group under federal law to comply with the MHPAEA parity provisions, which apply only to large employer groups.

Because of this federal requirement, carriers writing in New Hampshire's small employer market must provide coverage options that satisfy the federal requirements. However, because of New Hampshire's guaranteed issue law, coverage options that include federally required mental health parity must be made available to any New Hampshire small employer that is interested in purchasing such coverage.

Small group carriers should file the appropriate riders and rate modifications with the department as soon as possible. The department will make the review of these forms a priority in recognition that the parity standards are presently effective.

For further information or questions, please contact Michael Wilkey at the New Hampshire Insurance Department at (603) 271-2261.