



## INFORMATIONAL MEMORANDUM OIR-11-09M

ISSUED

December 28, 2011

Florida Office of Insurance Regulation  
Kevin M. McCarty, Commissioner

### ALL LIFE AND HEALTH INSURERS AND HMOs

*The purpose of this memorandum is to inform Florida Life and Health Insurers and Health Maintenance Organizations (“HMOs”) that Florida has not enacted any statutory guidance electing to use the 50 employees as the upper limit for purposes of reporting small employer Medical Loss Ratios. This memorandum supersedes informational memorandum OIR-11-06M that was issued July 25, 2011.*

The U.S. Department of Health and Human Services (“HHS”) has adopted interim regulations at 45 C.F.R. Part 158 to address medical loss ratio (“MLR”) reporting and rebating requirements under the Affordable Care Act (“ACA”) using a definition of “small employer” that is different from state law. Under these federal regulations, “small employer” is defined to mean an employer “having an average of at least 1 but not more than 100 employees on business days during the preceding calendar year.” However, Section 627.6699(3)(v), Florida Statutes, defines “small employer” as follows:

in connection with a health benefit plan with respect to a calendar year and a plan year, any person, sole proprietor, self-employed individual, independent contractor, firm, corporation, partnership, or association that is actively engaged in business, has its principal place of business in this state, employed an average of at least 1 but not more than 50 eligible employees on business days during the preceding calendar year the majority of whom were employed in this state, employs at least 1 employee on the first day of the plan year, and is not formed primarily for purposes of purchasing insurance. In determining the number of eligible employees, companies that are an affiliated group as defined in s. 1504(a) of the Internal Revenue Code of 1986, as amended, are considered a single employer. For purposes of this section, a sole proprietor, an independent contractor, or a self-employed individual is considered a small employer only if all of the conditions and criteria established in this section are met.

On May 13, 2011, HHS’s Center for Consumer Information released technical guidance, which stated: “If a State uses 50 employees in its definition of small employer for other purposes, absent indication to the contrary, this will be deemed to be an election to use 50 as the upper limit for purposes of MLR reporting for that State’s experience.” As

outlined above, Florida law does use 50 employees in its definition of small employer for “other purposes,” as outlined in the provisions of Section 627.6699, Florida Statutes. However, MLR reporting is not one of those purposes for which Florida law currently establishes the threshold limit of 50 employees for small group employers.

Through this Informational Memorandum, please be advised that no legislative, administrative, or other “election” to expand the “purpose” of the small group employer definition has been made which would require Florida health insurance issuers or HMOs to calculate MLR at any threshold number. MLR reporting requirements are derived from the ACA, the implementing federal regulations, and HHS guidance. Florida law, however, remains unchanged.

**As a result, and exclusively for the purposes of calculating MLR under the ACA as reported on the National Association of Insurance Commissioners’ Supplemental Health Blank starting with calendar year 2011, calculations should be performed utilizing 100 employees as the upper limit for small group employers, pursuant to 45 C.F.R. 158. Please be mindful that the upper limit of 50 employees, as set forth in Section 627.6699(3)(v), Florida Statutes, remains applicable to all pertinent provisions that are contained in the Florida Insurance Code. Please conduct yourselves accordingly.**

If you have questions regarding the filing of this supplemental blank or revised contract forms, please contact Eric Lingswiler, Director of Life and Health Product Review, Florida Office of Insurance Regulation, at [eric.lingswiler@flor.com](mailto:eric.lingswiler@flor.com) or (850) 413-5110.