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To: [HOLMAN Jeannette * DCBS](#); [WOODS Gayle * DCBS](#)
Subject: Kaiser Permanente comments on group size counting and form under HB 2466 Rulemaking
Date: Tuesday, September 08, 2015 12:02:21 PM

Thank you for the opportunity to give feedback on the form and definition of Small Groups and method of counting employees. Given the agreement that HB 2466 established that it is best for the Oregon market for group size be determined in the same manner inside and outside Shop, we have three primary concerns as the rule currently reads..

Difficult to understand definition of Small Group

The rule as currently drafted points to a definition of a large group, and states if not a Large then is a Small. This approach is ambiguous and create confusion. We recommend Small Groups have a stand alone definition without reference to Large Group. A Small Group be defined as a group consisting of 1-100 employees. Employees are as calculated in the Exhibit to the rule (counting form).

Defining who is to be counted both in OAR 836-053-0021 and form consistent with Federal Rules and SHOP

The current rule and form should recite the entire list of who is not counted. Currently, the rule is referencing spouses, but the under SHOP (due to Federal law) list is more extensive - for example members of a sole proprietors household also are not counted when determining the group's size.

We recommend reviewing the entire Federal list for counting and making it identical on the Oregon form and in the rule. Specifically, the SHOP calculator says to exclude from the employee count- independent contractors or COBRA and retired employees; and certain household family members of certain owners, partners and shareholders. OAR 836-053-0021 attempts to outline which employees to not count according to ACA rules, but it falls short by not calling out the household family members of certain owners, partners & shareholders.

NOTE: Group size determination does not prohibit coverage under the group policy, rather affects how the group is sized.

Alignment of Look back

Currently, the SHOP calculator does not apply a look back period for the purposes of employee count.

As drafted the rules and form apply a one year look back. The result of this will be a group being sized differently inside vs. outside of shop. The March HHS guidance, explains that the group employee count is based on the month. Once again, if the agreement is to define and count group size inside and outside of SHOP - then the Oregon rule and form should reflect the month of quote status for the number of employees and remove the one year look back period. Failure to remove the look back will result in groups being sized differently inside and outside of shop, contrary to the intent of HB 2466.

Again, we appreciate the opportunity to provide feedback, If you need further clarification we are happy to provide additional information.

Thank You,
Theresa

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