

October 14, 2015

ACA Change to Small Group Market Definition

President Obama has signed the Protecting Affordable Coverage for Employees (PACE) Act that amends the Affordable Care Act (ACA) definition of a “small employer” for purposes of purchasing health insurance coverage. This bi-partisan legislation leaves the federal definition of a small business as 2-50 employees. States will now have the flexibility to determine the size of their small group market instead of being forced into a national standard. This is a favorable change for small businesses and many hope this development may signal bi-partisan opportunities for other fixes to the ACA.

Background: Under the ACA, health insurance offered in the small group market must meet strict underwriting requirements and cover all essential health benefits; conditions that do not apply in the large group market. A controversial aspect of the ACA called for the establishment of a new, federal definition of “small employer” as those with 2-100 eligible employees effective as of January 1, 2016. Prior to January 1, 2016 states had the flexibility to maintain the definition of a small employer to those with up to 50 employees and most states continued to do so. Under the ACA rules beginning January 1, 2016, every state was required to expand the definition of the small group market to include employers with up to 100 employees. The ACA’s expanded definition would have forced non-grandfathered insured plans of employers with 51-100 employees into the ACA community rating standards and would have required them to cover all essential health benefits. With expansion, these 51-100 groups would have faced less favorable rate structures, narrow networks and restricted access to out-of-network services.

The change: Concerns about steep price increases and loss of benefit design flexibility from many businesses with 51–100 employees who would be re-classified as a “small group” prompted a push for the repeal of this requirement. The PACE Act now repeals the mandatory expansion of the small group market to employers with up to 100 employees and reverts to the prior definition of up to 50 employees.

State rules can vary: States maintain flexibility to define the small market as up to 100 employees. While the federal definition is now set at 2-50 as a result of the change to the ACA, federal law still allows states to develop their own definition of what constitutes a small group. For example, a state could still establish their own local requirements that a small group could be defined as 2-50, 2-75, 2-100 or any denomination they choose. A few states, like New York for example, have already enacted laws or issued regulatory guidance changing their small group definition to the 1-100 employee definition in 2016. Most states will likely be reverting back to 50 lives for community rating, however, these states will need to enact legislation prior to considering

a change.

Potential implications for employers and plan sponsors: While this law is very significant for smaller companies, it also has possible indirect implications for larger companies. If the political parties and the President can reach bi-partisan compromise on changes to the ACA on this issue, there is hope they can do the same on other aspects of the law that are unfavorable to employers and sponsors; things like the “30 hour rule”, the complex “reporting rules,” and the wildly unpopular “Cadillac tax.” We are monitoring all of these developments closely and will share updates as they become available.

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