

 HCR ALERT!

October 6, 2015

## Obama to Sign PACE Act, Allowing States to Define Small Group as 50 or Fewer Employees

The New York Times has [reported](#) that the President will sign the Protecting Affordable Coverage for Employees Act (PACE Act), which amends the Affordable Care Act (ACA) to provide states the flexibility to define a “small employer” for group health insurance purposes as one with 50 or fewer employees on average in the preceding calendar year. States may expand the definition of small employer to include companies with 51-100 employees if they wish, although they are no longer required to do so. The PACE Act is a welcome relief to mid-sized employers in the 51-100 employee range who would have been newly reclassified as “small group” for insurance purposes starting in 2016.

### ***What is a small employer?***

Historically, most states have defined a small employer for purposes of group health insurance as one with 50 or fewer employees. The threshold is typically determined under one of three methods: Average Total Number of Employees (ATNE); Full-Time Equivalents (FTEs); and Eligible Employees.

It is anticipated that most states will retain the 50 employee limit in 2016. However, our understanding is that the District of Columbia and several states (CA, CO, MD, NY, VA and VT) have already changed their definition of small group to 100 or fewer employees starting in 2016 (some transition relief may be available). It is unclear whether these states will amend or repeal those laws to reflect the lower limit once again permissible under the ACA.

### ***What does the ACA require of small group plans?***

Certain requirements apply to small group plans under the ACA. They must provide essential health benefits (EHBs), which is a package of benefits comprised of items and services in ten categories, including hospitalization, prescription drugs, and mental health benefits. Large group and self-insured plans are not required to offer the EHB package. Small group plans are also subject to strict community rating rules, which prohibit carriers from underwriting based on factors other than age (3:1 ratio limit), family size, geographic region, and tobacco status (1.5:1 ratio limit).

### ***Are all small group plans ACA-compliant?***

Not necessarily. In November 2013, the Centers for Medicare and Medicaid Services (CMS) announced a transition policy under which insurance carriers could continue to offer plans in the small group market that did not comply with certain of the ACA's market reforms, including the community rating rules and EHB package requirements. In March 2014, CMS extended this policy for two years – to policy years beginning on or before October 1, 2016.

This transition policy was of interest to many employers in the 51-100 employee range, who availed themselves of it in order to continue in plans that would have been reclassified as small group starting in 2016. It was also used by employers with 50 or fewer employees to avoid having to provide the full EHB package.

### ***How have carriers and employers responded to CMS' transition policy?***

This year, many employers in the 51-100 employee range accepted "early renewals" from their insurance carriers. Under this strategy, an employer renewed its policy "early" – typically by October 1, 2015. This enabled the employer to avoid community rating and other mandates applicable to small group plans under the ACA until the start of its October 1, 2017 plan year (the October 1, 2016 plan year would fall within the transition policy noted above).

Employers who accepted an early renewal should, however, discuss with ERISA counsel the possible impact on their "pay-or-play" transition relief, which delays the application of the pay-or-play rules until the 2016 plan year for employers with 50-99 FTEs if certain conditions are met. One of the conditions is a requirement that the employer not change its plan year after February 9, 2014 to begin at a later date. An employer who accepts an early renewal in 2015 arguably delays the start date for its 2016 plan year. In addition, if transition relief is lost, it is not clear when it is lost (i.e., is it lost for all of 2015 or only for the part of the 2015 plan year that falls in 2016).

We understand that interpretation of this rule varies among ERISA practitioners, so we caution affected employers to discuss this with their own counsel. Of course, if the PACE Act is signed, it will avert the need to early renew. For those who have already renewed, guidance from the IRS would be welcome.

### ***What else does this mean for the ACA?***

The PACE Act does not delay the ACA's employer mandate or its reporting requirements. However, the Act has broad bipartisan support and perhaps signals that there may be more bipartisan adjustments to the ACA in the future. Presidential candidates on both sides have signaled that they would explore repealing the ACA's excise tax on high-cost health plans (a/k/a the Cadillac tax) as well as the ACA's 2.3% tax on medical device manufacturers.

In the meantime, mid-size employers who would have been reclassified as small group can breathe easier now that they'll remain in the large group as long as their state does not voluntarily choose to expand its definition of small group. They are not required to cover all EHBs and their carriers can go beyond the four limited underwriting criteria applicable to small group plans.

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Your Trion Strategic Account Managers are here to answer any questions you might have as you prepare to comply with upcoming ACA requirements. If you are not currently a Trion client and

would like assistance navigating the changes required by health care reform, please contact us today by emailing [trionsales@trion-mma.com](mailto:trionsales@trion-mma.com).

### **ACA Regulations & Guidance Issued In the Last Two Months**

IRS Issues Final Forms [1094-B](#), [1095-B](#), [1094-C](#), [1095-C](#), [Series B Instructions](#) & [Series C Instruction](#)

IRS Issues [Notice 2015-68 Information Reporting on Minimum Essential Coverage](#)

IRS Issues [Proposed Rules on Minimum Value](#)

ACA FAQs Part XXVIII – [Transparency Reporting](#)

IRS Issues Draft Forms [1094-B](#), [1095-B](#), [1094-C](#), [1095-C](#), [Series B Instructions](#) & [Series C Instruction](#)

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