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Small Group Market – Changing Definition

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Beginning in 2016, the definition of "small employer" for insurance rating and underwriting purposes changes. In general, employers with 51–100 full-time equivalents (FTEs) may now fall into the small employer category, and such groups will be subject to community rating and be required to offer essential health benefits for the first time. However, transition relief issued by the Department of Health & Human Services (HHS) and the Centers for Medicare & Medicaid Services (CMS) allows states and insurers to choose to renew current policies through October 1, 2016. In other words, depending upon which state the insurance policy is being issued out of, employers with 51–100 FTEs, may have the option to renew their current policies through October 1, 2016. As of July 15, neither Alaska nor Washington states have announced any intention of adopting this transitional relief.

Background

Under the Affordable Care Act (ACA), the definition of a small employer is "an employer who employed an average of at least 1 but not more than 100 employees on business days during the preceding calendar year and who employs at least 1 employees [sic] on the first day of the plan year."

In November 2013, CMS announced a one-year transition policy allowing insurers in the small group market to renew policies that would otherwise have been canceled due to noncompliance under health care reform beginning in 2014. Then in March 2014, HHS announced a two-year extension of this policy.

Although the transition relief primarily affects the small group market by allowing the renewal of non-compliant plans, the transition relief also applies to employers who currently purchase insurance in the large group market, but who, as of January 1, 2016, will be redefined as a small employer required to purchase insurance in the small group market.

In states that choose to adopt the transition relief, insurers have the option of renewing current policies without being considered out of compliance with various small group market requirements that do not apply to the large group market (e.g. rating rules and requirement to offer essential health benefits). CMS has clarified that an employer with 51–100 FTEs qualifies for transition relief with respect to a large group policy purchased before January 1, 2016 if the policy is renewed for a plan year that begins between January 1, 2016 through October 1, 2016.

Determining Employer Size

Small group versus large group for purposes of insurance rating is determined on a state-by-state basis through 2015. Most states currently define small group as 50 or less, but many define that count differently (e.g. number enrolled, number of full-time or total employees). Beginning in 2016, however, the same calculation used to determine whether an employer is an applicable large employer under Section 4980H (the "employer mandate") must be used by all states, and those employers with 100 or fewer FTEs will be considered small group for insurance rating purposes. This includes the requirement under 4980H rules to aggregate employees across all entities that are part of the same controlled group or affiliated service group under §414 rules.

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Interaction with Section 4980H

Employers with 50 or more FTEs are considered "applicable large employers" and subject to 4980H requirements. Such employers may face potential shared responsibility payments (4980H penalties) if coverage meeting certain requirements is not offered to substantially all of their full-time employees. **Note**: An employer with 50–100 FTEs may be considered a small employer for insurance rating purposes and an applicable large employer required to comply with Section 4980H requirements.

For the first year of 4980H application, 2015, a variety of transition relief is available. However, almost all transition relief is conditional upon the requirement that the plan year cannot be changed to be later in the year after February 9, 2014. This includes the transition relief that generally allows employers with 50–99 FTEs to avoid any potential penalties until plan year 2016. Loss of the 4980H transition relief would mean any 4980H penalties are calculated from January 1, 2015 going forward.

Some employers with 51–100 FTEs may consider moving their current plan year to be later in the year to extend the option to renew their current policies in the large group market through late 2017 (if available), rather than having to move to the small group market sooner. However, it is important for such employers to consider whether moving the plan year to allow them to remain in the large group market for another year or two is worth losing transition relief during 2015 from 4980H penalties.

Summary

Whether it is advantageous to be in the small group or large group market depends largely on the products and pricing available in the state issuing the insurance policy. In states that choose to adopt the transition relief, some employers in the 51–100 range may find it advantageous to remain in the large group market as long as possible. This may make a plan year move to later in the year attractive. For employers who already offer generous coverage to most full-time employees, such a strategy may be the best option. However, for employers who are depending on 4980H transition relief through at least 2015, it is important to consider whether the advantages of moving the plan year outweigh the potential penalties that may apply upon losing 4980H transition relief. And finally, regardless of whether the employer is worried about 4980H transition relief or not, keep in mind that a change in plan year does not generally take place without some administrative hassle (e.g. short plan year, COBRA rates, health FSA elections, etc.).

CMS FAQs (Question #8 & 11) - http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/Final-Master-FAQs-5-16-14.pdf

CMS Transition Relief (Mar. 5, 2014) - http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/transition-to-compliant-policies-03-06-2015.pdf

As always, should you have any questions, please contact your Parker, Smith & Feek Benefits Team.

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