



## PACE Act Changes the Definition of Small Group Insurance

President Obama has signed legislation recently passed by Congress which changes how "small group" health insurance will be defined for rating and underwriting purposes. Previously, under the Affordable Care Act (ACA), a small group was scheduled to be defined as employers with fewer than 100 employees beginning in 2016. The PACE Act now defines a small employer as *one that employed an average of not more than 50 employees on business days during the preceding calendar year*. However, the act also gives states the option to define the small group market differently in each state. Most states are expected to move forward defining small groups as employers with no more than 50 employees, as was common prior to the ACA.

### Background

The ACA made significant changes to the benefits, underwriting, and rating rules that apply to the small group health insurance market. Prior to the ACA, small group health insurance was principally regulated by state insurance law. Changes imposed by the ACA included among other things;

- Modified community rating which prohibited group rating based on health history
- No gender based rates
- Limits on age rating
- Requirements for small group health plans to cover essential health benefits

These rules apply to all small group health plans, not just those sold through a state or federal Exchange.

The ACA also expanded the definition of a "small employer" to employers with less than 100 full-time equivalents (FTEs) beginning in 2016. Prior to this planned expansion, most state insurances defined a small employer as an employer with less than 50 employees. The definition of how employees were counted also varied from state to state.

### What Does the PACE Act Do?

The act defines a small employer as *one that employed an average of not more than 50 employees on business days during the preceding calendar year*. States have the option to define the small group market differently, however, most states will likely return to a small group definition of 50 employees, similar to what existed prior to the ACA. Even so, some states may still expand the size of employers subject to the small group rules up to the 100 employee threshold. There will obviously be a period of uncertainty over the next few months as each state determines their approach going forward.

It is important to note that this change does not affect the ACA rules determining if an employer is considered an "applicable large employer" (ALE) for purposes of the §4980H employer shared responsibility rules (often called the play or pay rules). An ALE is an employer with 50 or more FTEs, and this ALE definition will not be affected by state small group definition changes.

### How are States Reacting?

#### ALASKA

We have been notified by the Director of Insurance that Alaska will keep the definition of small group as under 50 employees.

#### OREGON

The Oregon Insurance Division (OID) is taking steps to solicit rapid stakeholder input, a necessary precursor to the emergency rulemaking that would be required to change the definition of "small group". The key question, from OID's perspective, is whether it is now "too late" to change course. A final decision is expected soon.



## PACE Act Changes the Definition of Small Group Insurance *(continued)*

### WASHINGTON

In Washington State, Insurance Commissioner Kreidler has stated that he “will support the President’s decision (to continue to define “small group” as 1-50 employees) and implement the new change in Washington state as smoothly as possible”. So whereas we thought the small group rules would pertain to groups from 1-100, they will still only apply to groups of 1-50. Confused yet? Well, so are the insurance carriers, who likely have already developed their products and rate filings off the expected rule change. This may delay renewals for January 1st in the 51-100 size range. We are talking with the insurance carriers and will keep you apprised as we learn more.

### Summary

Obviously, employers with well over 100 employees are not affected by this act, and employers with under 50 employees would generally be considered part of the small group market regardless of these changes. Employers in the range of 50-100 employees will need to consult with their employee benefits advisors and health insurance carriers to determine how this may impact their benefits and rates going forward.

*As always, should you have any questions, please contact your [Parker, Smith & Feek Benefits Team](#).*

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