

# update

## New Law Protects Mid-Sized Employers from Being Required to Buy Health Insurance in the “Small Group” Market

The Protecting Affordable Coverage for Employees Act (PACE Act), which President Obama signed into law on October 8, 2015, amends the definition of “small employer” in the insurance-market rule of the Affordable Care Act.<sup>1</sup> By way of background, the Affordable Care Act would have required that, as of January 1, 2016, all employers with 100 or fewer employees would be considered small employers. The PACE Act, which had bipartisan support in Congress, changes this requirement and, instead, continues to define small employers as those with 50 or fewer employees. However, it allows states to treat employers with between 51–100 employees as small employers, if they choose to do so.

### Background on the Provision and Why It Was Changed

The provision to change the definition of “small employer” was included in the Affordable Care Act in order to expand the insurance market for small employers and to allow employers with fewer than 100 employees to buy coverage in the Small Business Health Insurance Exchanges (SHOP Marketplace).<sup>2</sup> However, more recently, industry experts predicted that expanding the small group market to those employers would likely lead to higher premiums.<sup>3</sup> Experts also predicted that mid-size employers would be more likely to self-insure health benefits rather than purchase coverage in the small group market.

Congress passed the PACE Act in order to maintain the status quo with respect to insurance coverage available for employers in the 51–100 group market. Now, these employers will not be included in the small group market unless their state elects to treat them as small employers. It is unlikely that many states will do so in light of the prediction of higher costs for this group.



### Health Compliance News Highlights:

- A new law amends the Affordable Care Act’s definition of “small group market” to allow states to decide whether to keep or expand the definition of “small employer.”
- Self-insured employers are not affected.

<sup>1</sup> The Affordable Care Act is the shorthand name for the Patient Protection and Affordable Care Act (PPACA), Public Law No. 111-48, as modified by the subsequently enacted Health Care and Education Reconciliation Act (HCERA), Public Law No. 111-152.

<sup>2</sup> The SHOP Marketplace is open to employers with 50 or fewer full-time equivalent employees. An [Overview of the SHOP Marketplace](#) is on the [HealthCare.gov](#) website.

<sup>3</sup> For example, an August 5, 2015 issue brief from the American Academy of Actuaries, “[Drivers of 2016 Health Insurance Premium Changes](#),” noted:

Under the expanded small group definition, groups sized 51-100 will face more restrictive rating rules, which will increase relative premiums for some groups and reduce them for others. In addition, groups sized 51-100 will face additional benefit and cost-sharing requirements, which could reduce benefit flexibility and increase premiums. The more restrictive rating and benefit requirements could cause more groups sized 51-100, especially those with healthier, lower-cost employees, to self-insure, particularly among those for whom premiums would increase under the new rule. This could put upward pressure generally on small group market premiums.

States that elect to extend the “small employer” definition to up to 100 employees for coverage effective January 1, 2016 are requested to notify CMS of their election by October 30, 2015 at [marketreform@cms.hhs.gov](mailto:marketreform@cms.hhs.gov).

## Answers to Frequently Asked Questions

On October 19, 2015, the Centers for Medicare & Medicaid Services (CMS) issued a set of [answers to frequently asked questions \(FAQs\) concerning the PACE Act](#).

## Implications for Employers

Self-insured employers are not affected by the PACE Act. In light of the rollback of the Affordable Care Act rule on small employers, it is unlikely that the Marketplace or State Exchanges would be expanded to larger employers in the near future. Insured employers with 50 or more employees may still purchase coverage in the large group market, unless their state expands the definition of the small group market.

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