



WHAT EMPLOYERS NEED TO KNOW RIGHT NOW ABOUT HEALTH CARE REFORM

## CMS Provides Clarity on PACE Act Implications for States

The Providing Affordable Coverage for Employees (PACE) Act amended the Patient Protection and Affordable Care Act (ACA) and redefined small employers as those with 50 or fewer employees; it also gives states the option to expand the definition to include employers with up to 100 employees (or, practically speaking, those with 51 to 100 employees, also called "mid-size employers"). Prior to the ACA, all states defined small employers as those with 1 to 50 or 2 to 50 employees; however, many have passed legislation redefining the group size up to 100 employees beginning in 2016. States are now in the process of determining what they define as "small employer."

The Centers for Medicare & Medicaid Services (CMS), in response to the PACE Act, [issued an FAQ](#) on the impact of the PACE Act on small group expansion. CMS clarified that states that choose to expand the definition up to 100 employees beginning January 1, 2016, were required to notify CMS of the decision by October 1, 2015. States with other effective dates should notify CMS of the decisions as soon as is practical. A state's definition is legally binding on health insurance issuers.

Regarding rate filings by the carriers, the FAQ stated that states with a state-based Small Business Health Options Program (SHOP) that do not rely on the federal platform have the discretion, consistent with state law and regulations, to allow resubmission of small group coverage rate filings, including changes to rates for the first quarter of 2016. Technical constraints will prohibit carriers to change rate filings for the first quarter in states that utilize a federally-facilitated (FF) SHOP or a state-based SHOP using the federal platform. Rates may be adjusted effective April 1, 2016.

On November 1, 2015, the beginning of open enrollment for 2016 coverage, all FF-SHOP eligibility screens on HealthCare.gov will ask employers if they have 1 to 50 employees for purposes of SHOP eligibility. CMS is working to update these screens as quickly as possible in applicable states.

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The PACE Act will not affect counting methodologies used by SHOs in relation to employer shared responsibility, medical loss ratio (MLR) calculations, risk adjustment or risk corridors. The definition of a small employer for purposes of MLR, risk corridors, and risk adjustment will follow the state definition. Reporting for those programs during a transition in the state definition of small employer in the applicable reporting year should align with the policy issued to the employer, regardless of actual employer size.

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