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Under the Affordable Care Act (“ACA”), the definition of a small group for purposes of non-grandfathered insured coverage was set to change from an employer with 50 or fewer employees to an employer with 100 or fewer employees, effective for plan years beginning on or after January 1, 2016.

On October 7, 2015, the President signed into law bipartisan legislation, the Protecting Affordable Coverage for Employees (“PACE”) Act, which maintains the “50 or fewer” definition of a small employer. The PACE Act contains language that permits a state to use the expanded small group definition (employers with 100 or fewer employees). At this point, it is unclear whether states will retain the “50 or fewer” definition or opt to expand the small group market.

## What does this mean?

If a state follows the federal government and retains the existing small group definition (50 or fewer employees), employers with insured non-grandfathered plans in the 51-100 employee market will not be subject to the following:

- The requirement that all of the essential health benefits are provided under the group health plan and the actuarial value of coverage cannot fall below a Bronze level plan (60% actuarial value); and
- New underwriting requirements that limit rating variations to:
  - The benefit level and tier of coverage (e.g., single vs. family);
  - Geographic area;
  - Age (shall not vary by more than a 3 to 1 for adults); and
  - Tobacco use (shall not vary by more than 1.5 to 1).

This change has no effect on other aspects the ACA, including the Employer Penalty and reporting on Forms 1094-C and 1095-C.

We will continue to keep you apprised of any new developments.