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Prior to the enactment of the Affordable Care Act (“ACA”), New York Insurance Law Section 3231 classified an employer in the small group market if the employer had between 1-50 employees. However, with the enacted ACA, the federal definition of small employer and in effect, small group, changed from 1-50 to 1-100. The new definition of small employer would go into effect January 1, 2016.

Federal Agencies provided a number of transitional policies, which could be adopted by states to delay the application of the new federal definition of small employer, which would affect the definition of small group. New York was one of the few states that refused to adopt any transitional policies. Instead, in April 2015, New York opted to amend the New York Insurance Law, Section 3231, to permanently change the definition of small employer from 1-50 to 1-100. At the time, New York legislators were aligning the New York definition of small group with the federal definition of small employer.

However, in October 2015, Congress signed into law the Protecting Affordable Coverage for Employees Act (“PACE Act”), which would amend the federal definition of small employer from 1-100 back to 1-50, effective January 1, 2016.

While many employers exhaled a sigh of relief, employers in the State of New York must still cope with the expanded New York small group definition, which includes employers with 1-100 employees.

Implications – Small vs. Large

Employers in the small group market are limited in plan design, administration, and cost. Under the ACA, an employer in the small group market may see premium rates vary based on only four categories:

1. coverage category;
2. rating area;
3. age; and
4. tobacco use.

A small group may not experience rate variations for any factor other than the four identified. In addition, an employer in the small group market is required to offer an Essential Health Benefits Package, which includes:

1. essential health benefits;
2. limited cost sharing; and
3. bronze, silver, gold, or platinum level coverage of the full actuarial benefits provided under the plan.

New York State Specific Provisions

Under New York State Insurance Law, an employer in the small group market is limited from self-insuring. Specifically, an employer may not purchase stop loss and may not receive administrative service from any carrier licensed in the State of New York. As a result, an employer that falls in the small group market in New York may self-insure without stop loss and by self-administering the plan. Finally, any group medical or group hospital insurance coverage obtained from an out-of-state trust covering between 1-50 employees, covering 1-100 employees (beginning 2016), or covering participating persons who are residents of New York, must be community rated regardless of the situs or delivery of the policy.

New York's Pending Change in Definition

New York is one of four states (the others are California, Colorado and Vermont) that maintain an expanded small group definition (1-100 employees). The imminent change of the law is unknown. However, there have been two recent efforts to effectuate a change to the New York state definition of small group:

- In January 2016, Bill No. A01154 was introduced. The Bill would amend the definition of small group market in the State of New York. However, since January, the Bill remains referred to Insurance.
- In March 2016, Bill No. S07104 was introduced. The Bill would also amend the definition of small group market in the State of New York. The Bill has also been referred to Insurance.

Both Bills are at the infant stages. We will continue to keep you apprised of this situation.

