

RECENT LEGISLATION AFFECTING SMALL EMPLOYER GROUP SIZE

Recently, President Obama signed into law the PACE Act, a measure that makes the Affordable Care Act expansion of the small group health insurance market optional for states. The small group market had been slated to expand to businesses with between 51 and 100 employees. The Federal PACE Act preserves the definition of “small employer” under federal law to mean those groups with 50 or fewer employees, although the law does not prevent states from increasing the number if they choose. Both the U.S. Senate and the House of Representatives passed the measure in early October.

In 2013, the Virginia General Assembly passed legislation mirroring the federal Affordable Care Act definition of “small employer” into Virginia’s insurance laws. Thus, the Virginia legislative change expanded the definition of “small group” to include groups with 51-100 employees beginning on January 1, 2016. In order to preserve the current definition of “small employer” to mean groups with 50 or fewer employees, action of the General Assembly is required. The Bureau of Insurance has no authority to ignore the statute passed by the General Assembly in 2013 mandating the expansion of the definition of "small employer" effective January 1, 2016.

It should be noted that Virginia Code § 38.2-3454.1 does allow for a limited federally-created exception to complying with the 2014 health insurance reforms, including the expanded definition of “small employer.” This state law will, subject to certain exceptions, allow health insurers to continue existing large group coverage to groups of 51-100 employees for all policies that are renewed on or before October 1, 2016. This is contingent on whether their current health insurer still offers the policy and agrees to renew it.

In summary, the Bureau has no authority to administratively preserve the current definition of “small employer”, as this will require a legislative change. However, some small employer policyholders may be able to keep their current policies for a period of time if they renew their policy on or before October 1, 2016, if their current carrier still offers the policy and agrees to renew it.

On October 19, 2015, the Centers for Medicare and Medicaid Services released the attached document, which addresses a number of frequently asked questions relating to the PACE Act and small group size requirements:

<https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQ-on-the-Impact-of-the-PACE-Act-on-State-Small-Group-Expansion.pdf>