DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201

Date: December 17, 2015

Subject: Frequently Asked Questions on the Impact of PACE Act on State Small Group Expansion

On October 7, 2015, the Protecting Affordable Coverage for Employees Act was enacted as Public Law 114-60 (PACE Act). The PACE Act amends section 1304(b) of the Affordable Care Act and section 2791(e) of the Public Health Service Act to revise the definition of small employer for purposes of the market reforms under title I of the Affordable Care Act and title XXVII of the Public Health Service Act. The PACE Act generally defines a small employer as an employer who employed an average of 1-50 employees on business days during the preceding calendar year, but provides States the option of extending the definition of small employer to include employers with up to 100 employees. The law became effective upon enactment.

Q1: What constitutes a State election to extend the definition of small employer?

A1: Any State action that extends the definition of a small employer to include employers with up to 100 employees that is legally binding on health insurance issuers in the State will constitute an election to extend the small employer definition for purposes of the PACE Act. Such an election may be made through any State action within the authority of the applicable State regulatory agency that makes the definition legally binding on health insurance issuers in the State. If a State makes this election, the definition of small employer must be applied uniformly to all health insurance issuers in the State, including those in the Small Business Health Options Program (SHOP).

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.[1] States that elect to extend the small employer definition with another coverage effective date are requested to notify CMS as soon as soon as practicable.

Q2. Given the recent change to the federal definition of small employer promulgated under the PACE Act, may States allow carriers to modify their rate filings for small group coverage for 2016?

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[1] This information collection request is anticipated to affect fewer than 10 entities in a 12-month period. Accordingly, under 5 CFR 1320.3(c)(4), it is not subject to the Paperwork Reduction Act of 1995.

A2: States with a State-based 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. Due to technical constraints, issuers offering small group coverage in States with a Federally-facilitated SHOP (FF-SHOP), and in State-based SHOPs using the Federal platform, cannot make changes to rate filings for the first quarter of 2016. Consistent with 45 CFR 156.80(d)(3)(ii), issuers offering small group coverage in any State may adjust rates for the second quarter, for rates effective April 1, 2016, to the extent otherwise allowed under applicable State and Federal law.

Q3. Does the enactment of the PACE Act affect the counting methodologies to be used by the SHOPs in accordance with Internal Revenue Code section 4980H(c)(2), and for purposes of the medical loss ratio (MLR), risk adjustment, and risk corridors programs?

A3: No. The requirements regarding the employee counting methodologies for the FF-SHOPs and State-based SHOPs, and for the MLR, risk adjustment, and risk corridors programs remain the same, and are not changed by the PACE Act.

Q4: How does the PACE Act impact employer size for MLR, risk corridors, and risk adjustment reporting purposes?

A4: The definition of a small employer for purposes of MLR, risk corridors, and risk adjustment will follow the State definition. Since States that elect to increase the upper limit of small employer must do so uniformly for all ACA programs, and given the greater distinction between the small and large group markets as a result of the 2014 market reforms, CCIIO's May 13, 2011 Guidance, Q&A #1, in which we permitted States to increase the upper limit of a small employer for MLR reporting purposes only, is no longer applicable, beginning with the 2017 MLR reporting year. Nonetheless, if, for example, during a transition in the state definition of small employer from 100 employees to 50 employees, a small group policy is issued to a large employer, the experience of that large group employer should be reported with the small group market for that State for the purposes of those programs for the applicable reporting year. In other words, 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.

Q5. If a State with a SHOP that uses HealthCare.gov elects to extend the definition of small employer to 1-100 employees, when will CMS make the applicable changes to the employer eligibility screens on HealthCare.gov?

A5: 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 1-50 employees for purposes of SHOP eligibility. Because the PACE Act was signed into law so close to the start of Open Enrollment, CMS will be unable to change these eligibility screens for specific States until sometime after November 1. CMS intends to make the applicable eligibility screen changes as quickly as possible and work with the SHOP Call Center and stakeholder groups to communicate options for employers in these States until the changes have been made to the online system.

Moving forward, CMS will be able to make changes to the online system as soon as one month after being notified by a State of its election to extend the definition of small employer.