HEALTH CARE REFORM: MID-SIZE EMPLOYERS SHIFTING INTO SMALL GROUP MARKET

Effective January 1, 2016, the definition of "small employer" changes as required by the Affordable Care Act (ACA). Under the new definition, a small employer is one with an average of at least one but not more than 100 employees on business days during the preceding calendar year and has at least one employee on the first day of the plan year. This *Briefing* outlines the change in definition of small employers, the methods for counting employees to determine if an employer is a small employer and the new ACA requirements that may impact premium costs.

DEFINITION OF SMALL EMPLOYER

Under California Health & Safety Code section 1357.500(k)(1)(A) and Insurance Code section 10753(q)(1)(A), a small employer means *either* of the following:

- **For plan years beginning from January 1, 2014 through December 31, 2015**, any person, firm, proprietary or nonprofit corporation, partnership, public agency or association that is actively engaged in business or service that, on at least 50 percent of its working days during the preceding calendar quarter or preceding calendar year, employed at least one but no more than 50 *eligible employees*, the majority of whom were employed within California.

- **For plan years beginning on or after January 1, 2016**, the definition is the same as above except the number of eligible employees changes to *no more than 100 full-time and full-time equivalent employees*.

COUNTING EMPLOYEES TO DETERMINE SMALL EMPLOYER STATUS

The method for counting employees to determine if an employer is a small employer differs depending on when the plan year begins.

- **For plan years beginning from January 1, 2014 through December 31, 2015**, an employer must count its *eligible employees* to determine if it is a small employer. An *eligible employee* means *either* of the following:

  - A permanent employee actively engaged by the employer, averaging 30 hours per week over the course of a month and who has met any statutorily authorized applicable waiting period requirements. It does not include employees who work on a part-time, temporary, or substitute basis.

  - A permanent employee who works at least 20 hours but not more than 29 hours per week is deemed to be an eligible employee if *all* four of the following apply:

    - The employee otherwise meets the definition of an eligible employee except for the number of hours worked.

- The employer offers the employee health coverage under a health benefit plan.
- All similarly situated individuals are offered coverage under the health benefit plan.
- The employee must have worked at least 20 hours per normal workweek for at least 50 percent of the weeks in the previous calendar quarter.

- **For plan years beginning on or after January 1, 2016**, an employer must count its number of *full-time employees and full-time equivalent employees* as set forth in Section 4980H(c)(2) of the Internal Revenue Code to determine if it is a small employer. This is the same method used to determine if an employer is an Applicable Large Employer subject to the Employer Mandate. For more information on this method, please see our July 2014 *Briefing* "Determining Applicable Large Employer Status."

  http://www.keenan.com/news/brief/2014/BRF_20140721_DeterminingALEStatus_KA.pdf

Note: When the small group definition expands to 100 employees, it is possible that an employer may be a small employer for purposes of purchasing group coverage and an Applicable Large Employer for purposes of the Employer Mandate. For example, an employer with 75 full-time and full-time equivalent employees would be considered a small employer for purposes of buying coverage on the group market but would also be an Applicable Large Employer subject to the Employer Mandate because it has over 50 full-time and full-time equivalent employees.

SUBJECT TO NEW ACA REQUIREMENTS

Employers with 51-100 full-time and full-time equivalent employees shifting from the large group to the small group market in 2016 may see premium costs change due to ACA requirements that are not applicable in the large group market. The most notable requirements include:

Rating Limitations

Under California law, only three rating factors may be used to set premiums in the individual and small group markets – age, geography and family size.

- **Age** – Rates for age may vary within a 3:1 ratio for adults age 21 and older. Age factors and age bands must be determined based on an enrollee's age on the date of policy issuance or renewal. For individuals added to the plan on a date other than issuance or renewal, the enrollee's age is determined as of the date such individual enrolls in coverage. The following standard age bands must be used:
  - Children: A single age band covering children 0 to 20 years of age, where all premium rates are the same.
  - Adults: One-year age bands starting at age 21 and ending at age 63.
  - Older adults: A single age band covering individuals 64 years of age and older, where all premium rates are the same.

Issuers must use a uniform age rating curve established either by Centers for Medicare and Medicaid Services (CMS) or the state. California did not establish its own age curve; therefore, the CMS version is used.

- **Geography** – California has 19 rating areas and rates are based on employer location.

- **Family size** – Issuers may vary rates based on whether a plan covers an individual or a family. In the small group market, per-member rating must be used, which requires that age factors be apportioned to each family member. However, the final Department of Health and Human Services (HHS) regulations impose a cap of no more than three covered children under the age of 21 whose per-member rates are taken into account in determining the family premium.

Other rating factors commonly used in the large group market, such as claims experience, group size, industry and gender, cannot be used for 51-100 employees groups shifting into the small group market in 2016.

Essential Health Benefits Package

Issuers offering coverage in the individual and small group market must ensure the coverage includes the "Essential Health Benefits Package" (EHB Package). The EHB Package must include all 10 categories of essential health benefits, must limit cost-sharing and provide a necessary "metal" level of coverage (i.e., bronze, silver, gold or platinum). Issuers are not obligated to offer the EHB Package for large group coverage, which gives large employers flexibility with respect to plan design and covered benefits. Groups with 51-100 employees who are shifting into the small group market may see premium costs change if the benefits or cost-sharing in the EHB Package vary from their current plan design.

Please contact your Keenan Account Manager for questions regarding this *Briefing* or if you require any additional information regarding the Affordable Care Act.