

FAQS ABOUT AFFORDABLE CARE ACT IMPLEMENTATION PART 33

October 21, 2016

Set out below is an additional Frequently Asked Question (FAQ) regarding implementation of the market reform provisions of the Affordable Care Act. This FAQ has been prepared jointly by the Departments of Labor (DOL), Health and Human Services (HHS), and the Treasury (collectively, the Departments). Like previously issued FAQs (available at www.dol.gov/ebsa/healthreform/index.html and www.cms.gov/ccio/resources/fact-sheets-and-faqs/index.html), this FAQ answers a question from stakeholders to help people understand the law and benefit from it, as intended.

Premium Reduction Arrangements for Student Health Plan Coverage

On September 13, 2013, the DOL published Technical Release 2013-03¹ addressing the application of the Affordable Care Act market reforms to health reimbursement arrangements (HRAs) and employer payment plans (EPPs). The Treasury Department (Treasury) and the Internal Revenue Service (IRS) contemporaneously published parallel guidance in Notice 2013-54,² 2013-40 IRB 287, and HHS issued guidance stating that it concurs in the application of the laws under its jurisdiction as set forth in the guidance issued by Treasury and IRS and DOL.³ Subsequent guidance reiterated and clarified the application of the market reforms to EPPs.⁴

Employer Payment Plans

Under Technical Release 2013-03, an EPP is a group health plan under which an employer reimburses an employee for some or all of the premium expenses incurred for an individual

¹ Technical Release 2013-03 is available at <http://www.dol.gov/ebsa/newsroom/tr13-03.html>.

² Notice 2013-54 is available at <http://www.irs.gov/pub/irs-drop/n-13-54.pdf>.

³ See Insurance Standards Bulletin, Application of Affordable Care Act Provisions to Certain Healthcare Arrangements, September 16, 2013, available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/cms-hra-notice-9-16-2013.pdf>.

⁴ There have been several prior issuances on the topics addressed in this notice: (1) FAQs About Affordable Care Act Implementation (Part XI), issued on January 24, 2013 by DOL (<http://www.dol.gov/ebsa/faqs/faq-aca11.html>) and HHS (http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs11.html); (2) IRS Notice 2013-54 and DOL Technical Release 2013-03, issued on September 13, 2013; (3) IRS FAQ on Employer Healthcare Arrangements (<http://www.irs.gov/Affordable-Care-Act/Employer-Health-Care-Arrangements>); (4) FAQs About Affordable Care Act Implementation (Part XXII), issued on November 6, 2014 by DOL (<http://www.dol.gov/ebsa/faqs/faq-aca22.html>) and HHS (<http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-Part-XXII-FINAL.pdf>); (5) Notice 2015-17, 2015-14 I.R.B. 845, issued by Treasury and IRS on February 18, 2015; and (6) Notice 2015-87, 2015-52 I.R.B. 889, Q&A-1 to Q&A-6, issued by Treasury and IRS on December 16, 2015. See also 26 CFR 54.9815-2711(d), 29 CFR 2590.715-2711(d), and 45 CFR 147.126(d) (80 FR 72192, Nov. 18, 2015).

market health insurance policy or directly pays a premium for an individual market health insurance policy covering the employee. EPPs and HRAs typically consist of a promise by an employer to reimburse medical expenses (whether in the form of premiums or direct payments for medical costs) up to a certain amount. As group health plans, EPPs and HRAs are subject to the group market reform provisions of the Affordable Care Act, including the prohibition on annual dollar limits under Public Health Services (PHS) Act section 2711 and the requirement to provide certain preventive services without cost sharing under PHS Act section 2713. The 2013 guidance generally provides that EPPs and HRAs will fail to comply with these group market reform requirements because these arrangements, by their very definition, promise to reimburse or pay medical expenses on the employee's behalf only up to a certain dollar amount each year, and therefore fail to comply with the Affordable Care Act prohibition on annual dollar limits and the requirement to provide coverage of certain recommended preventive services without imposing any cost-sharing requirements.

The 2013 guidance further clarified that these employer health care arrangements will not fail to meet the group market reform provisions when integrated with a group health plan that otherwise complies with those provisions. Importantly, however, these employer health care arrangements cannot be integrated with individual market policies to satisfy the market reforms.

Consequently, these employer health care arrangements may be subject to penalties, including excise taxes under section 4980D of the Internal Revenue Code. An EPP, which by definition is an arrangement that reimburses or directly pays the premium for individual coverage, cannot be integrated and, as a result, will fail to satisfy the market reforms.

Student Health Insurance Coverage

On March 21, 2012, HHS published a final rule establishing requirements for student health insurance coverage under the PHS Act and the Affordable Care Act.⁵ This final rule defines "student health insurance coverage" as a type of individual market health insurance coverage that is offered to students and their dependents under a written agreement between an institution of higher education (as that term is defined for purposes of the Higher Education Act of 1965) and an issuer.⁶

Many colleges and universities provide students (typically graduate students) with student health coverage at greatly reduced or no cost as part of their student package, which may include tuition assistance and a stipend for living expenses. For certain students, the school might reduce the cost of coverage through a credit, offset, reimbursement, stipend, or similar arrangement (a

⁵ See 45 CFR 147.145.

⁶ Student health insurance coverage is regulated under the Affordable Care Act individual market reforms. See Affordable Care Act sections 1302 and 1201 (incorporating PHS Act section 2701). These requirements have been modified somewhat for student health insurance taking into account Congressional intent as expressed in section 1560(c) of the Affordable Care Act.

premium reduction arrangement). Because the students receiving premium reduction arrangements may perform services for the school providing the premium reduction arrangement, stakeholders have asked whether such an arrangement is a group health plan that fails to meet the group market reforms.

On February 5, 2016, DOL published Technical Release 2016-01⁷; Treasury and IRS published Notice 2016-17⁸, 2016-9 IRB 358; and HHS issued a bulletin providing substantially identical guidance.⁹ That guidance provides that the Departments will not assert that a premium reduction arrangement fails to satisfy PHS Act section 2711 or 2713 if the arrangement is offered in connection with other student health coverage (insured or self-insured) for a plan year or policy year beginning before January 1, 2017.

Q. Will the Departments' enforcement relief to colleges and universities for certain health care premium reduction arrangements offered in connection with student health plans be extended?

Yes. Colleges and universities have premium reduction arrangements for graduate student health coverage that are often part of a large and complex admission offer and acceptance process. Additionally, Congress evidenced an intent in the Affordable Care Act to preserve the ability of institutions of higher education to continue offering student health insurance plans otherwise permitted under applicable Federal, State, or local law.¹⁰

Accordingly, pending further guidance, the Departments consider it appropriate to further extend the enforcement relief provided in the February 5, 2016 guidance and will not assert that a premium reduction arrangement offered by an institution of higher education fails to satisfy PHS Act section 2711 or 2713 if the arrangement is offered in connection with student health coverage (insured or self-insured).

⁷ Technical Release 2016-01 is available at <http://www.dol.gov/ebsa/newsroom/tr16-01.html>.

⁸ Notice 2016-17 is available at <http://www.irs.gov/pub/irs-drop/n-16-17.pdf>.

⁹ See Insurance Standards Bulletin, Application of the Market Reforms and Other Provisions of the Affordable Care Act to Student Health Coverage, February 5, 2016, available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/student-health-bulletin.pdf>.

¹⁰ See Affordable Care Act section 1560(c).