

For Immediate Release:

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Employee Benefits
Compliance & Regulatory Affairs
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Compliance at-a-glance

- Employers must now verify coverage with the Exchange
- IRS rolls out additional guidance regarding health care reform's Form W-2 reporting ... medical coverage includes on-site medical clinics
- Another delay...Notice of Exchange not yet ready to send

PROCESS FOR VERIFICATION OF EMPLOYER-SPONSORED HEALTH COVERAGE RELEASED

The Department of Health and Human Services (HHS) issued proposed regulations on Medicaid, Children's Health Insurance Programs (CHIP), and the Exchanges related to:

- Essential Health Benefits (EHB) in alternative benefit plans
- Eligibility notices
- Fair hearing and appeal processes for Medicaid and the Exchanges
- Eligibility appeals
- Other provisions related to eligibility and enrollment for the Exchanges, Medicaid and CHIP, and Medicaid premiums and cost-sharing

The proposed regulations affect employers in the following ways:

- Verification of employee coverage:** Exchanges will request information from the employer regarding coverage offered to employees seeking coverage through the Exchange to determine if the employee is eligible for premium tax credits or cost-sharing reductions
- Penalty may be assessed:** A full-time employee receiving a tax credit for Exchange coverage may trigger a \$2,000 tax penalty if the employer does not offer coverage to substantially all (95%) full-time employees or a \$3,000 tax penalty if offering coverage to substantially all but coverage is not affordable or minimum value

Important Dates

Plan Years on/after 8/1/2012 - Health care reform's women's preventive services mandate with no cost-sharing (for calendar year plans the effective date was January 1, 2013)

Plan Years on/after 9/23/2012 - Health care reform's annual dollar limits for "essential health benefits" restricted to no less than \$2 million, absent a waiver (for calendar year plans the effective date was January 1, 2013)

Plan Years on/after 9/23/2012 - Summary of Benefits and Coverage (SBC) must be provided to plan participants and prospective participants upon marketing, 30 days prior to renewal and within 7 days of special enrollment election (for calendar year plans the effective date was January 1, 2013)

Plan Years Ending on/after 10/1/2012 - Comparative Effectiveness Fee: Fully-insured carriers and self-funded plan sponsors will be subject to a fee in the amount of \$1 per covered life. The Fee is due July 31 of each year using Form 720 "Quarterly Federal Excise Tax Return"

Plan Years on/after 1/1/2013 - Flexible Spending Accounts limited to \$2,500 for employee contributions

60 days after the beginning of the plan year - Employer Creditable Coverage Reporting to CMS due (e.g., if your plan effective date is 1/1, you must report by 3/1)

3/1/2013 - Notice of Exchange delayed pending further regulations

10/15/2013 - Medicare Part D creditable and/or non-creditable coverage notices to plan participants due (if not previously provided earlier in the year as part of the Benefits Information Guide or at open enrollment)

11/15/2013 - Barney & Barney's Legislative Compliance 2014 Outlook Seminar in San Diego, CA

- **Template to be created for verification:** A one-page template is being created by HHS in which the employer can download from the Exchange website and populate with information about their health coverage. Employees may then attach this to their Exchange application to provide pre-enrollment verification of coverage
- **Right to appeal:** The Exchange will notify employers if an employee is eligible for an advance payment of premium tax credits for Exchange coverage with a notice of the employer's right to appeal the determination

No action required:

Employers who may have employees that are eligible for a premium tax credit for Exchange coverage and who are not offering affordable coverage to their employees are encouraged to review the proposed regulations to fully understand the verification, notice of penalty and appeals process.

For complete details, see:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-22/pdf/2013-00659.pdf>

FORM W-2 REPORTING ON MEDICAL COVERAGE INCLUDES ON-SITE MEDICAL CLINICS

The Internal Revenue Service (IRS) recently released additional guidance regarding the health care reform Form W-2 reporting requirement. Employers issuing more than 250 Form W-2s the preceding year are required to report on the employee's Form W-2 the total medical premium cost for coverage provided through the employer. The guidance clarifies that "applicable employer-sponsored coverage" generally does not include HIPAA-excepted benefits (e.g., stand-alone dental, vision, supplemental plans, etc.), other than coverage for on-site medical clinics.

- **Clinic coverage may be reportable:** Coverage provided under the clinic is included in the total reportable cost of employer-sponsored coverage if the coverage provides preventive, diagnostic, and therapeutic services; procedures addressing physical, mental or bodily functions; and the sale or dispensing of drugs or medical devices
- **Most non-employer-affiliated clinics provide reportable services:** Include in the Form W-2 reporting
- **Former employees:** If has free access to clinic during COBRA, no reporting required

Action required for employers issuing 250 or more Form W-2s (that have an on-site medical clinic):

Report on Form W-2 ONLY IF there is a COBRA premium associated with the on-site clinic use. If no COBRA premium is charged, it need not be reported for any employee or former employee.

Notice 2012-09 is available at: <http://www.irs.gov/pub/irs-drop/n-12-09.pdf>

GUIDANCE DELAYS NOTICE OF EXCHANGE DISTRIBUTION DATE

The Department of Labor (DOL) recently posted Frequently Asked Questions (FAQ) delaying the Notice of Exchange distribution effective date. Originally, the Notice of Exchange was to be distributed by the employer to all new employees at the time of hire or to current employees by March 1, 2013. The Notice of Exchange will be a written notice informing:

- The employee of the existence of the Exchange including a description of how to contact the Exchange
- The employee that they may be eligible for a premium tax credit if the employee purchases a Qualified Health Plan (QHP) through an Exchange
- The employee that they may lose the employer contribution (if any) to any health benefits plan offered by the employer if choosing Exchange coverage

The FAQs indicated that the effective date is indefinitely delayed pending further regulations by the DOL. Future guidance is expected to provide for a model notice or allow the employer to use the Exchange template used for information gathering to verify eligibility for Exchange coverage due to the lack of affordable, Minimum Essential Coverage (MEC) offered by the employer.

HEALTH REIMBURSEMENT ARRANGEMENTS (HRA)

Also covered in the DOL FAQs:

- HRAs need not separately comply with annual and lifetime dollar limit restrictions on EHBs if electing the HRA is contingent on electing the medical coverage

No action required by employers:

Be aware of regulations to follow on the new effective date of the Notice of Exchange. Employers with non-integrated HRAs should consider making election of the HRA permitted only upon electing a major medical plan as well, to avoid the annual and lifetime dollar limit restrictions. More regulations expected.

For more information regarding these FAQs, go to:

<http://www.dol.gov/ebsa/faqs/faq-aca11.html>

QUESTION OF THE MONTH:

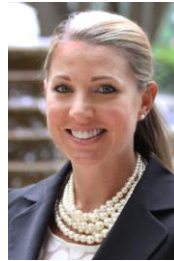
Q: Our company's health plan has a high-deductible coverage option that includes a general-purpose HRA. Without the HRA, that coverage option would qualify as a high-deductible health plan (HDHP) for purposes of HSA eligibility. Some of our employees have asked whether they can opt out of the HRA to preserve their HSA eligibility, but we suspect they would not be happy if they simply waived the company's contribution. Is there an IRS-recognized way for employees to keep their HSA eligibility and still receive HRA contributions?

A: A "suspended HRA" can allow employees to receive HRA contributions without loss of current HSA eligibility. If that feature is included in an HRA, employees can suspend their HRAs by electing, before the beginning of the HRA "coverage period," to forgo payment or reimbursement by the HRA of medical expenses that are incurred during the coverage period. (The suspension does not have to apply to HSA-compatible expenses—i.e., expenses that qualify as permitted insurance, permitted coverage, or preventive care.) According to Revenue Ruling 2004-45, the individual can be HSA-eligible until the suspension ends, even if the employer contributes to the HRA during the suspension. Medical expenses incurred during the suspension (other than any HSA-compatible expenses that are allowed to be paid or reimbursed by the HRA) simply cannot be paid or reimbursed by the HRA during the suspension or after the suspension ends.

HRA suspensions allow employees to contribute to their HSAs while accumulating HRA contributions for future expenses. (If the HSA contributions are funded under a cafeteria plan during the suspension period, the salary reduction election will have to indicate that the salary reduction is paying only for the HSA and not for the HRA.) The rules for future use of the HRA balance will be determined by the HRA's design, which could allow the balance to be used after termination of employment or retirement. Note, however, that an individual's post-employment HSA eligibility could be adversely affected by the post-employment availability of an HRA balance.

One detail that is not clear about HRA suspensions is when they must be elected. Revenue Ruling 2004-45 indicates that the election must be made before the start of the coverage period, but "coverage period" is not defined. Other IRS guidance suggests significant IRS concern about giving participants the discretion to turn their HRA coverage on and off at will, so it seems likely that the IRS would require an HRA suspension election to be made before the beginning of the HRA's plan year and to be irrevocable during that plan year. The election could expire automatically at the end of the plan year (or longer specified suspension period), or it could be designed to renew automatically unless the participant elected to lift the suspension before the start of a subsequent coverage period. Employers using the "evergreen" approach should provide advance notice of automatic renewal so that HRA participants have a reasonable opportunity to lift their suspensions.

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