

Student Employees and the Affordable Care Act – Part 2 of 4: Can an offer of student coverage count as an applicable large employer’s “offer” of coverage?

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In the previous installment of this series, we addressed whether student employees may be excluded from an employer’s offer of coverage. We concluded that a blanket exclusion of this nature could put an employer at risk for **ACA** penalties. Our second issue addresses student health insurance coverage required by state law.

By way of background, many states require educational institutions to offer health insurance to students. In Massachusetts, for example, this coverage is commonly known as “SHIP” coverage and is addressed under 956 CMR 8.00. As we discussed in last week’s post, applicable large employers must make an “offer” of coverage to full-time employees or risk paying a penalty. We also discussed how student workers could be considered full-time employees for ACA purposes if they work enough hours. If an employer offers student health insurance to its student employees, may that offer count as an “offer” of coverage for purposes of the ACA’s employer shared responsibility mandate?

Unfortunately for employers, it cannot.

Under the ACA, most individuals in the United States are required to have “minimum essential coverage” in order to avoid an individual tax penalty. Similarly, employers are required to offer “minimum essential coverage” or “MEC” in order to avoid an employer shared responsibility payment.

Insured student health plans, like the ones required under the Massachusetts SHIP rules, provide MEC by definition. More specifically, the definition of “minimum essential coverage” includes “plans in the individual market” (See Internal Revenue Code Section 5000A(f)(1)(C)) and “student health insurance coverage” is defined by HHS as a type of individual health insurance coverage. See CFR § 147.145.

But what if the student health plan is self-insured? Self-funded student health plans were designated as MEC under 5000A(f)(1)(E) (“other coverage”) through 2014. After 2014, they will be MEC only if recognized as such through application to HHS via the process outlined in CFR § 156.604 . Note

that, at this time, it is unclear if any educational institutions have availed (or will avail) themselves of this process; however, it seems likely that any such plans designated as MEC will fall under 5000A(f)(1)(E) (“other coverage”). (See [here](#) for a current list of approved plans; as of February 25, 2015, none of the approved plans appear to be student plans.)

At first glance, this seems promising. Student health plans are MEC, and an employer needs to provide MEC. But here’s the catch: an employer may only meet the requirements of the employer shared responsibility mandate by making an offer of minimum essential coverage under an “eligible employer-sponsored plan” as defined under Code Section 5000A(f)(2) (i.e. a “group health plan” or “group health insurance coverage”). Unfortunately for employers, the IRS and HHS have clearly indicated that student health plans do not fall under Code Section 5000A(f)(2); rather, insured student plans have been designated as “plans in the individual market” under 5000A(f)(1)(C) and self-insured plans, to the extent classified as MEC, are likely to be designated as “other coverage” under 5000A(f)(1)(E).

- **Practitioner’s note:** You may recall that an applicable large employer will not be responsible for an employer shared responsibility payment unless one or more full-time employees obtain subsidized coverage on a health care exchange. In general, if an individual is eligible for minimum essential coverage, he or she cannot obtain an exchange subsidy. However, an exception is made for eligibility for individual market coverage such as an insured student health plan, as well as for eligibility for self-insured student health plans (to the extent they are covered by a designation by HHS as MEC).

So we now know that an offer of student health insurance cannot be used to help an employer avoid penalties under the employer shared responsibility mandate (although the matter of self-insured student plans is somewhat unsettled). Accordingly, any student who is also a full-time employee of the educational institution must be given an offer of coverage under the institution’s group health plans, or the institution is at risk for an employer shared responsibility penalty.

Coming next week: Can an employer subsidize an insured student health plan?

For part one, [click here](#).

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