

Student Health Insurance Subsidies Catch Another Break

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On October 21, 2016, the ***Departments of Labor (DOL), Health and Human Services (HHS)***, and the ***Treasury*** (collectively, the Departments) issued a FAQ providing indefinite relief for employers who subsidize student health insurance coverage.

Background

Under the Affordable Care Act (ACA), employer payment plans (EPPs) (i.e. group health plans that directly reimburse employees for all of some of the premiums expenses incurred for individual market coverage) do not work because they violate certain ACA market reforms (most typically, the prohibition on annual dollar limits under Public Health Service (PHS) Act section 2711 and the requirement to provide certain preventive services without cost sharing under PHS Act section 2713.) This is the case whether or not the employee pays taxes on the EPP dollars.

The Unusual Case of Student Health Insurance

Educational institutions have traditionally subsidized student health insurance coverage. However, “student health insurance coverage” is considered to be individual market coverage under the ACA. So, technically, when a school defrays the costs of student health insurance through a subsidy, it creates an EPP and violates the ACA market reforms.

Initial Relief in Early 2016

Recognizing that student health insurance coverage offers an unusual and highly technical problem that may have been overlooked by those affected, on February 5, 2016 the Departments provided transition relief from ACA Sections 2711 and 2713 to EPPs providing subsidies for student health coverage. The transition relief was limited in duration – it applied only to student health coverage with plan or policy years beginning before January 1, 2017.

Relief Extended Indefinitely

In Affordable Care Act FAQ Part 33, issued October 21, 2016, the Departments indicate that, 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).

Next Steps?

Without a doubt, this is welcome relief for institutes of higher education that offer subsidies to student employees to help defray the cost of student health coverage. However, it would be premature to assume that the Departments intend to permanently exempt these subsidies from the general EPP prohibitions. Employers are advised to pay close attention to future guidance on the matter.

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