

NC NONPROFITS UPDATE: Legal Changes Regarding Employer Reimbursement Of Individual Health Insurance Premiums



Jason Cogdill

Benefits Attorney – ProBenefits, Inc.

Member, NC Center for Nonprofits Pro Bono Legal Assistance Program

Context

- The Affordable Care Act (“ACA”) has had a significant impact on employer-provided health insurance
- Goal today: Provide update on a significant change for employers regarding payment or reimbursement of individual (non-group sponsored) health insurance premiums
- There is no change for employers sponsoring group insurance plans
 - Employer contributions fully deductible
 - Employee paid premiums deducted pre-tax through Section 125 plan
- The change applies to employers that do not have a group health insurance plan and/or are paying or reimbursing premiums for employees’ individual health insurance purchased directly from a carrier or through the new Health Insurance Marketplace
 - Side note: There is no change to what an employer can do regarding coverage obtained through a spouse’s employer. That coverage can be reimbursed on a taxable basis.

Individual Premium Reimbursement

- Payment or reimbursement of individual insurance premiums has been a common strategy of small employers & nonprofits for many years
- 2 traditional models: Direct pay (carrier list bill) or employee reimbursement
 - *Examples*
- IRS Code allows these payments to be made on a tax-free basis (not added to W-2 income)
 - 1961 IRS Revenue Ruling (RR 61-146) has never been overturned
 - Health Reimbursement Arrangements (Code Section 105)
- The Code has not been formally amended. However, new ACA rules affect this practice & create new liability for employers
- Employers have options, but must be aware of new rules to avoid potential liability under the ACA
 - ACA general noncompliance penalty is \$100 per day per employee

ACA Guidance & Impact

Joint IRS/DOL guidance issued 1/24/13 – 11/6/14

- Issue: Application of ACA insurance reforms to HRAs, Health FSAs, & “certain other employer arrangements”
 - Key issue: prohibition on annual/lifetime limits for “essential health benefits”
 - Most significant guidance – Sept. 2013: IRS Notice 2013-54 & DOL Technical Release 2013-03. Guidance states that any direct or indirect employer payment or reimbursement of individual premiums constitutes a “plan” such that the ACA market reform rules apply.
 - Most recent guidance – Nov. 6: IRS/DOL/HHS joint FAQs – confirm that any employer payment or reimbursement creates a “plan” subject to ACA rules, even if taxable income is used.
 - FAQs: www.dol.gov/ebsa/faqs/faq-aca22.html
 - Cumulative guidance removes employer options to reimburse individual premiums directly (outside of a plan), through an HRA, or pre-tax under Section 125 plan. Conservatively, any employer involvement implicates ACA risk if arrangement is scrutinized by the agencies.
 - No exception for nonprofits or churches. The only exceptions appear to be for (a) retirees or (b) arrangements benefitting a single employee

Current Status & Options

- Summary: Employer payment or reimbursement of individual or Marketplace premiums is no longer allowed without risk. The impact is immediate since the guidance does not reflect future implementation of a rule, but rather agency interpretation of existing law.
- For employers currently paying or reimbursing individual premiums, consider impact and assess potential change for January 2015.
- Remaining options:
 - (1) Discontinue employer involvement with individual premiums, & address with adjustments to regular compensation going forward.
 - Method used should not reflect any requirement on employee to purchase coverage
 - Pros: simplified approach, & employer is no longer involved with health insurance. Also can lead to more flexibility for individual employees.
 - Employee communications & additional factors
 - (2) Implement a group health insurance plan
 - Removes compliance risk, but expense is a factor
 - (3) Continue current practice & accept ACA risk
 - Not recommended. Even if agency audit is unlikely, risk is too significant under ACA general penalty. The law could change, but unlikely to change in the short-term.

Resources

- For more information or assistance, contact your CPA, insurance advisor, or the Center for referral through our network of partners
- For links to relevant agency guidance, see references & links in this presentation or contact us for a copy.
 - Copy of slides & access to recording will be made available in case helpful to you, a member of your team, or additional colleague
- Jason Cogdill: Corporate Counsel & Benefits Attorney
 - Benefits & ERISA advising
 - ProBenefits: Benefits administration & compliance
 - Money Saving Partner of NC Center for Nonprofits for FSA, POP, HRA, HSA, & COBRA administration as well as ACA advising