



Interim Guidance Addresses Expatriate Health Coverage

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The Department of the Treasury, Department of Labor, and Department of Health and Human Services (collectively, the “Departments”) recognize that insurers and plan sponsors may need additional time to modify their current expatriate health plans to comply with the Affordable Care Act (“ACA”) and thus provide relief by allowing application of a reasonable good faith interpretation of the standards in place. Future regulations are expected.

■ Background

The Departments issued Frequently Asked Questions (“FAQs”) providing relief from the ACA market reform requirements for certain expatriate group health insurance coverage in 2013.

On December 16, 2014, the Expatriate Health Coverage Clarification Act of 2014 (“EHCCA”) made further changes, applicable to plans issued or renewed on or after July 1, 2015.

■ Notice 2015-43 and Recap of Previous Guidance

Notice 2015-43 provides that, until the issuance of further guidance, taxpayers can apply this previously-issued guidance using a reasonable good faith interpretation except as to the PCOR Fee or the Health Insurer Fee.

So where are we now? The following summarizes the changes as to expatriate health plans issued or renewed after July 1, 2015:

Expatriate plans are defined as self-funded and fully insured plans that offer coverage to qualified expatriates and their dependents. Qualified expatriates are: (1) certain foreign employees transferred or assigned to the U.S. for a specific and temporary employment purpose or assignment, (2) individuals working outside the U.S. for at least 180 days in a 12-month period, and (3) “similarly situated individuals.”

Guidance:

- Exempts fully insured and self-funded expatriate health plans from most of the ACA's market reforms (though not the adult dependent/age 26 requirement).
- Deems expatriate health plans to be “minimum essential coverage” for expatriate employees and their dependents, regardless of where they are located in the world.
- Deems expatriate health plans to be “minimum essential coverage under an eligible employer-sponsored plan” for purposes of the employer mandate with respect to certain foreign employees working in the U.S. and certain U.S. expatriates working abroad.
- Exempts expatriate plans from the Reinsurance Fee.
- Exempts expatriate plans from the PCOR Fee.
- Exempts expatriate plans from the Health Insurer Fee after 2015 and reduces the fee for 2014 and 2015.
- Exempts employer-sponsored coverage of most categories of expatriates from the Cadillac Plan tax.
- Exempts expatriate health plans from a change in the definition of a “small group,” which could have prevented the sale of expatriate coverage to employers with 50 to 99 lives.
- Exempts insurers of expatriate health plans and expatriate health plans from the so-called “administrative simplification” requirements, including SBC requirements.

The Employer Penalty and reporting requirements of Code Sections 6055 and 6056 (Forms 1095-C and 1094-C) still apply. However, for expatriate health plans, statements to individuals reporting minimum essential coverage may be furnished in electronic format unless the recipient refuses consent.

Plan sponsors of expatriate plans should review their plan design carefully to ensure they are in compliance with certain provisions of the ACA still applicable to such plans.

For the Notice, visit:

<http://www.irs.gov/pub/irs-drop/n-15-43.pdf>

