CTSI
Serving Colorado's Counties

Technical Update

Volume 20 Number 23 September 20, 2016

Proposed Rule Affects Employers Offering Opt-Out Payments to Employees Declining Group Health Coverage

The Treasury Department and the IRS recently issued a proposed rule on employer-offered opt-out payments to employees. An opt-out payment is narrowly defined as a payment that is made only when an employee declines coverage under the group health plan. The proposed rule affects when cash opt-out payments change the amount employees are required to pay for their health care contribution when determining whether premiums are considered “affordable” under the Affordable Care Act’s employer-shared responsibility penalty and related reporting requirements.

The proposed effective date of the rule is the plan year beginning on or after January 1, 2017. With a final rule not possible until the fall, employers with calendar-year plans will need to implement changes even before a final rule is issued.

Background

Affordability of group health plan coverage is important for purposes of the Affordable Care Act’s employer-shared responsibility penalty and related reporting requirements (*e.g.*, how large employers complete IRS Form 1095-C). Large employers (those with 50 or more full-time employees or equivalents) that do not offer affordable coverage to full-time employees would have to pay a penalty if that full-time employee receives a premium assistance tax credit in an Exchange/Marketplace.

Coverage is considered affordable if the employee’s cost for self-only coverage does not exceed a certain percentage of their household income (9.69 percent in 2017). Because it is difficult for an employer to know an employee’s household income, affordability is generally determined by comparing the employee’s required contribution against certain measures of income. For example, if an employee’s required contribution for self-only coverage for the lowest cost plan is $95.93 per month or less for the 2017 calendar year, the plan would be considered affordable.

The Proposed Rule

The proposed rule addresses when the opt-out payments increase the amount of the employee’s required contribution. The general rule is that an opt-out payment increases the amount of the required contribution for health coverage for all employees. However, under the proposed rule, an opt-out payment will not be treated as increasing the amount of the employee’s required contribution only if the arrangement meets all of the following conditions:

- The employee provides reasonable evidence (*e.g.*, an attestation) that (1) the employee and every person in the employee’s expected tax family have or will have “minimum essential coverage” for the period of coverage to which the opt-out payment applies, *and* (2) the minimum essential coverage they have or will have is not individual market coverage, whether obtained through the individual insurance market or a Marketplace or state Exchange. A requirement to have other group coverage (*e.g.*, through a spouse’s employer) would be acceptable, but the plan terms should nonetheless specify that the opt-out payment will not be paid to any employee whose other coverage is individual market coverage.
- The reasonable evidence is provided at least every plan year (preferably during an open enrollment period or just after the plan year starts).

CTSI
Serving Colorado's Counties

Technical Update

Volume 20 Number 23

September 20, 2016

- No payment can be made if the employer knows or has reason to know that the employee (or any member of the tax family) does not actually have the alternative coverage (*e.g.*, through a spouse's employer).

Example: An employee who enrolls in self-only coverage pays $75 per month. An employee who waives coverage is paid $50 per month. if the opt-out arrangement meets all of the above requirements, then the opt-out payment does not increase the cost of any employee's contribution for purposes of the affordability test. For purposes of the employer penalty, each employee's required premium is $75 per month (whether the employee enrolls in the plan or waives coverage). If the opt-out arrangement does not meet all of the above requirement, the IRS will consider the required contribution to be $125 per month ($75 plus $50) for all employees (whether they enroll in the plan or waive coverage).

Implications for Employers

Employers with calendar-year plans will currently be in the process of setting employee contribution strategies for 2017, and preparing open enrollment materials for the fall open-enrollment period. Employers with an opt-out cash payment should ensure that the new requirements are included in any plan documents or enrollment materials describing the opt-out arrangement, as well as attestation forms for waiving employees that will need to include new language about employees and family members having other "minimum essential coverage" that is not individual market coverage. Employers will also need a process to review employee attestations regarding whether other coverage exists.

What This Means for Counties

For more information about how these new rules may affect your plan or plans, please contact CTSI at 303-861-0507.

Segal Consulting Update Public Sector Benefits Compliance News. (8/15/2016). *Proposed Rule Affects Employers that Offer Opt-Out Payments to Employees who Decline Group Health Coverage*.

800 Grant St., Suite 400
Denver CO 80203

303.861.0507
FAX: 303.861.2832