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Health Care Reform Alert

November 26, 2014

IRS Provides Guidance on Minimum Essential Coverage, Affordability and Hardship Exemptions

On November 21, the Internal Revenue Service (IRS) issued final regulations related to the requirement for individuals to maintain Minimum Essential Coverage to meet the Individual Mandate. The final regulations are effective on November 26, 2014.

The regulations clarified the definition of minimum essential coverage for certain types of medical assistance and address three general areas for purposes of determining affordability of employer-sponsored coverage: (1) employee contributions to a cafeteria plan; (2) Health Reimbursement Arrangements (HRAs); and (3) wellness program incentives.

A notice released at the same time provided a list of all hardship exemptions from the Individual Mandate that may be claimed on an individual's federal income tax return without obtaining a hardship exemption certification.

Minimum Essential Coverage Clarifications

The regulations clarified that the following types of medical assistance do not qualify as minimum essential coverage beginning in 2015:

- Medicaid coverage for the medically needy that does not otherwise meet the requirements for minimum essential coverage. Medically needy is defined as an individual with high medical expenses whose high income level disqualifies them from Medicaid.
- Coverage for low-income pregnant women for pregnancy services.
- Children's Health Insurance Program (CHIP) coverage for an unborn child that

includes comprehensive prenatal care for the mother.

Affordability Considerations

- *Employer Contributions to Cafeteria Plan.* Employer contributions in the current plan year under a cafeteria plan that (1) may not be taken as a taxable benefit, (2) may be used to pay for minimum essential coverage, and (3) may be used only to pay for medical care (referred to in the regulations as "health flex contributions") are taken into account for purposes of determining an individual's required contribution. As a result, these health flex contributions count toward an employee's required contribution for employer-sponsored coverage.
- *Health Reimbursement Arrangements*. Amounts newly made available under a Health Reimbursement Arrangement (HRA) that is integrated with an employer-sponsored plan offered by the same employer count toward an employee's required contribution if: (i) Employees can use the amounts only to pay premiums for the plan, or (ii) Employees can use the amounts for premiums, cost sharing or benefits not covered by the plan.
- *Wellness Program Incentives.* In determining affordability, wellness program incentives related to tobacco use are treated as earned in determining employees' required contribution, and wellness incentives unrelated to tobacco use are treated as unearned.
    - For wellness programs related to tobacco use, affordability will be determined assuming that each employee satisfies the requirements of the wellness program.
    - For other types of wellness programs, affordability will be determined assuming that each employee fails to satisfy the requirements.

Wellness program incentives under the regulations include programs that provide a discount or rebate, programs that impose a surcharge, and participatory and health-contingent wellness programs.

Hardship Exemptions

Individuals can claim a hardship exemption on their 2014 tax return without obtaining an exemption certificate from the Health Insurance Marketplace if:

- They live in a state that chose not to expand Medicaid, have household income below 138% of the federal poverty level, are under age 65, and do not qualify for traditional Medicaid or Medicare.
- Two or more members of a family qualify for self-only employer coverage but the combined cost of coverage for all exceeds the affordability threshold for the household.
- The gross income of the tax filer is below the federal tax filing threshold, and the tax filer cannot be claimed as a dependent by anyone else.
- Individuals obtained coverage through the Marketplace before the end of the first open enrollment period (March 31, 2014). This includes individuals who were "in line" to enroll on March 31 who subsequently enrolled and individuals who enrolled outside the Marketplace for coverage effective on or before May 1, 2014. The hardship exemption applies for months prior to enrollment during which they were uninsured.
- Individuals who applied for CHIP coverage during the 2014 open enrollment period.

- Individuals eligible for coverage through an Indian Health Care Provider.

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