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# Transition Relief Provided for Student Premium Reduction Arrangements

On February 5, three federal agencies — Treasury, DOL and HHS — provided colleges and universities guidance on how ACA market reforms apply to arrangements that reduce the amount that their student-employees must pay for student health coverage. The guidance also provides temporary transition relief until the first day of the plan or policy year beginning on or after January 1, 2017 for those premium reduction arrangements that might be viewed as employer payment plans. The transition relief will allow institutions to make alternative arrangements and bring their arrangements into compliance without penalty.

## Background

In Notice 2013-54, the IRS addressed the application of the Affordable Care Act's (ACA's) market reforms to employer payment plans (EPPs) and health reimbursement arrangements (HRAs). The guidance made clear that EPPs and HRAs will generally violate ACA's prohibition on annual dollar limits on essential health benefits (by limiting the amount of reimbursement or payment) as well as the requirement to cover certain preventive services without cost-sharing unless they are integrated with an ACA-compliant group health plan, or they qualify as retiree-only plans. However, the guidance also provided that EPPs and HRAs cannot be integrated with individual health insurance policies to satisfy these market reforms, and, for that reason, such arrangements may be subject to penalties, including excise taxes.

Colleges and universities often offer student health coverage to their students and their dependents. For ACA purposes, student health insurance is treated as a type of individual health insurance policy. Many institutions

**Know Your Terms**

The IRS uses the term "employer payment plan" when discussing an arrangement where the employer directly pays or reimburses health insurance premiums for an individual policy. It uses the term "health reimbursement arrangement" when referring to an arrangement that reimburses an employee's medical expenses, which could include health insurance premiums. Both are considered group health plans for purposes of the ACA.

An arrangement that directly pays or reimburses health insurance premiums will be an EPP even if the payments or reimbursements are included in the employee's income. However, if an employer simply increases an employee's compensation, but does not require the employee to use the additional money to pay for health coverage, the arrangement is not an EPP or a group health plan. (See our *For Your Information* from **April 7, 2015**.)

provide this coverage at reduced or no cost to some students (typically to graduate students); this premium reduction arrangement may take the form of a credit, offset, reimbursement or stipend. Because some students may teach or perform other services for the institution, it is possible that a student could be deemed an employee of the institution. In that event, the premium reduction arrangement could constitute an EPP that would not comply with ACA market reforms.

**Other Changes on the Way**

Late last year, Treasury and IRS also announced that they intend to amend the shared responsibility regulations to require staffing agencies and other third parties to apply the special educational organization rules to those employees, such as bus drivers and cafeteria workers, who provide services primarily to educational organizations if those employees are not given a meaningful opportunity to provide services throughout the entire year. (See our **March 3, 2016** *For Your Information*.)

## Transition Relief

On February 5, the IRS, DOL and HHS (the departments) provided guidance confirming the potential applicability of ACA market reforms to premium reduction arrangements offered in connection with student health plans. Notice 2016-17 provides colleges and universities that offer premium reductions to students who perform services for the school (such as teaching or research) additional time to determine whether their particular arrangement constitutes an EPP and thus fails to satisfy ACA requirements. (See also DOL Technical Release 2016-01 and HHS Insurance Standards Bulletin.)

Under this transition relief, the departments will not assert that a premium reduction arrangement offered in connection with student health coverage (insured or self-insured) for a plan or policy year beginning before January 1, 2017 fails to satisfy ACA market reforms. Thus, colleges and universities will generally have until the end of the academic year beginning in the summer or fall of 2016 and ending in 2017 in which to determine whether their premium reduction arrangement is an EPP and if so, to develop alternatives to come into compliance. Schools that do not bring their programs into compliance before the transition relief ends could face an excise tax of $100 per day for each affected student/employee.

### Action Steps

1. Determine whether the premium reduction arrangement would be considered an EPP if offered to an employee.
2. If so, determine whether any students benefiting from the premium reduction arrangement would be considered employees for ACA purposes.
3. If some student workers are employees, consider any alternatives to the current arrangement that would not create an EPP, such as offering additional compensation without mandating that it be used to pay for health coverage.

**Student or Employee?**

The IRS generally uses the common law standard in determining whether a student is an employee of the college or university for ACA purposes. Because different agencies use different tests to determine who is an employee, student status for ACA purposes cannot be determined by applying guidance issued under other laws (such as the FLSA or NLRA).

However, the shared responsibility regulations provide that a student performing services as part of a federal or state work study program is not considered an employee for purposes of hours worked under those programs. While a student who works as an unpaid intern or extern is generally not considered a school employee, a student who works in a paid internship or externship, or outside a qualified work study program, may be.

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## In Closing

The temporary transition relief will give colleges and universities a penalty-free window in which to assess whether the premium reduction arrangements they currently offer to student-employees in connection with student health coverage are EPPs and to consider and adopt alternative arrangements.

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