

Additional Guidance on Premium Reimbursement Arrangements

In a recently issued notice, the IRS provides additional guidance about premium and medical expense reimbursement arrangements. In particular, the notice discusses compensation designated to fund the purchase of individual market health coverage policies and clarifies that an increase in compensation not designated for the purchase of medical care is not an employer payment plan subject to the ACA. This is an important clarification for employers that want to help employees with payments of individual market coverage. The notice also explains how employers may reimburse Medicare premiums or pay medical expenses for employees covered by TRICARE without violating ACA market reform rules.

Background

Under long-standing [Revenue Ruling 61-146](#), employers are permitted to reimburse employees' properly substantiated individual health insurance premiums (or pay the insurance company directly) on a tax-free basis. Guidance from the Departments of Treasury, Labor, and Health and Human Services provides, however, that such an arrangement, if it covers two or more active employees, is a group health plan subject to the Affordable Care Act's (ACA) market reform provisions regardless of whether the employer includes or excludes the payment as taxable compensation. Because these arrangements fail to meet market reform requirements (e.g., the prohibition on annual limits and coverage for preventive services without cost-sharing), they are prohibited and employers implementing them may be subject to penalties, including excise taxes of \$100/day under Section 4980D of the Internal Revenue Code (Code). (See our [July 8, 2014](#) and our [November 19, 2014](#) *For Your Information* publications.)



IRS Notice Addresses Reimbursement Arrangements

The IRS issued [Notice 2015-17](#), addressing additional questions raised about arrangements that reimburse premiums or other medical expenses. Among other things, the guidance provides transition relief for small

employers and S-corporations in certain circumstances, but the guidance also discusses arrangements that reimburse Medicare premiums or TRICARE expenses and answers additional questions about these plans.

Comment. The IRS uses the term “employer payment plan” when discussing an arrangement where the employer directly pays or reimburses premium expenses for health insurance. It uses “health reimbursement arrangement” (HRA) when discussing reimbursement of medical expenses. Both are treated similarly in this notice and considered group health plans for purposes of the ACA.

Increase in Employee Compensation

Building on previous guidance, the notice provides that if an employer increases an employee’s compensation, but does not require the employee to use the additional money for health coverage, the arrangement is not an employer payment plan or a group health plan. Therefore, it is not subject to the ACA market reforms.

Comment. The notice further notes that giving employees information about the Marketplace or the premium tax credit is not an endorsement of a particular policy, form, or issuer of health insurance and also would not create a group health plan.

Additionally, the IRS reiterates that an arrangement under which an employer pays for or reimburses medical care is a group health plan subject to the ACA market reform requirements regardless of the tax treatment of the funds (e.g., pre-tax or post-tax) because the funds (taxable or not) are conditioned or dedicated to providing medical care for the employee. While Revenue Ruling 61-146 permits employers to pay or reimburse properly substantiated premiums paid for hospital and medical insurance) on a tax-free basis, it should not be read as providing any direction about compliance with the ACA’s market reforms.

Comment. The principles of Revenue Ruling 61-146 could still be useful for situations where ACA rules do not apply. For example, an employer could reimburse premiums paid for retiree only coverage and excepted benefits, such as a specified disease policy, a hospital indemnity plan or a stand-alone dental or vision plan.

Medicare and TRICARE Reimbursement Arrangements

The notice confirms that an arrangement under which an employer pays or reimburses an active employee for premiums for Medicare Part B or Part D is an employer payment plan. Similarly, an arrangement where an employer reimburses some or all of the medical expenses for employees covered by TRICARE is an HRA. In both cases, if the arrangement covers two or more active employees, it is a group health plan that must meet the ACA market reform requirements. Although such an arrangement may not be integrated with Medicare or TRICARE coverage, it can be integrated with another group health plan offered by the employer to satisfy ACA requirements.

Comment. Retiree-only plans are not subject to ACA market reforms. A retiree-only plan that reimburses premiums for Medicare or covers medical expense for a former employee covered by TRICARE would not need to be integrated with other coverage for purposes of ACA compliance.

An arrangement that reimburses Medicare premiums is integrated with other group health coverage if it meets all of the following conditions:

- The employer offers another group health plan to the employee that consists of more than excepted benefits and provides minimum value.

- The employee is actually enrolled in Medicare Parts A and B.
- The arrangement is available only to employees who are enrolled in Medicare Part A and Part B or Part D.
- The arrangement is limited to reimbursement of Medicare Part B or Part D premiums and excepted benefits, including Medigap premiums.

Similar rules apply for arrangements reimbursing medical expenses for employees covered by TRICARE.

Comment. It appears that integration for these purposes does not require that the employee enroll in the employer's primary group health plan. Note that this differs from HRA integration with individual group health plan coverage as permitted under [Notice 2013-54](#). Under that provision, the employee must be enrolled in the employer's (or other) primary group health plan coverage in addition to the HRA.

In Closing

The IRS continues to take the position that premium reimbursement arrangements (or employer payment plans) offered to an active employee population are group health plans subject to the ACA market mandates. Employers should take caution with programs that reimburse Medicare premiums or Tricare expenses. While permitted as discussed in this guidance, such an arrangement may run afoul of MSP and TRICARE rules. Further, while designating money (either pre- or post-tax dollars) to pay or reimburse premiums for individual market healthcare coverage creates a group health plan that cannot comply with the market mandates, employers can increase employees' compensation without conditioning that payment on the purchase of health coverage.

Proceed with caution

Although IRS rules would permit these reimbursement arrangements, other laws must still be considered. With some exceptions primarily for employers with less than 20 employees, the Medicare Secondary Payer (MSP) (and TRICARE) rules prohibit employers from offering financial or other incentives to active employees who are entitled to Medicare (or TRICARE) not to enroll in employer-provided coverage. Employers should exercise caution when considering such an arrangement.

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