



Live from NAHU!
Compliance Update – Where are We?

June 15, 2017

Q: Would 30% penalty for lapse apply to employees added to group plans?

A: No.

Q: OTCs allowed through FSA again without RX?

A: Yes.

Q: Is there a minimum number before an Employer has to report?

A: No change at this time from current ACA.

Q: What about the Senate bill which wants to get rid of the employer exclusion and tax the participants? That would totally kill the group market.

A: There were a lot of rumors about the Senate bill. The working draft released on 6/22/17 did not address the employer exclusion. Nonetheless, this is a provision that we are vigilant about and that we've had a lot of discussion about on the Hill.

Q: I assume these "final rules" are just proposed?

A: No, final rules are final rules.

Q: Any changes in commissions to agents for SEP enrollments?

A: Nothing in the rule addresses commissions.

Q: With the pre-verification for SEP, are the insurers going to be required to issue HIPAA certifications again as part of this new regulation?

A: Not as things stand. I suspect that some may offer something quite similar.

Q: QSEHRA - can it pay individual premiums?

A: That is the intent of the law.

Q: Is the reporting amount on the W-2 (QSEHRA) the amount available or the amount paid out during the calendar year?

A: It is the amount that the individual qualified for.



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Q: Does money provided through the QSEHRA reduce the subsidy available to the employee?

A: Yes, it could.

Q: How do Employers report to the Marketplace?

A: If this is relative to the QSEHRA, the individual receiving the benefit is required to notify the marketplace.

Q: With the proposed extension of the Cadillac tax, has there been discussion of the threshold increasing as well?

A: It will be indexed to general inflation.

Q: Can you please explain how an employer who offers an opt-out amount (unconditional) counts that in affordability calculations?

A: If an employee is required to pay \$100 for monthly premiums and the opt-out amount is \$200 per month, the amount that is considered “paid” by the employee for affordability purposes is \$300.

Q: Medicare Advantage OEP for 1/2019 is approved and done deal? Or is that something we are fighting for?

A: It’s a done deal.

Q: Are these audits for small employer also?

A: Any employer can be audited.

Q: What is the status of the Association Health Plan Bill?

A: It is pending in the Senate. The new Senate reconciliation bill includes association health plans.

Q: Is the EBSA compliance link solely for the 5500 form or ACA compliance in general

A: The link provides a compliance guide that is exhaustive.

Q: Have there been any changes to the measurement periods/look back periods etc. for counting employees and determination of ALE status?

A: Not at this time.



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Q: So, for that affordability opt-out, if a person takes the coverage, then it is \$200 contribution. If they don't take the coverage, then the ER puts \$300 towards the affordability, correct?

A: The total of the premium contribution and the opt-out amount applies to someone whether they take coverage or the opt-out. So, it becomes a factor in determining affordability for all employees.

Q: On the QSEHRAs - can an employer reimburse individual plan premiums or just expenses?

A: It is unclear on expenses. It is definitely aimed at reimbursing premiums.

Q: If the plan year begins July 1, can the rate of pay safe harbor use the 9.69% through 6/31/2018?

A: The safe harbor is based on calendar year.

Q: The proposed regulations for the premium tax credits were finalized on 12/19/16 but the IRS specifically declined to finalize provisions related to opt-out payments in those final regulations. Does this mean employers must follow the proposed regulations starting January 2017 or can they continue to exclude non-qualified opt out arrangements from the affordability calculation until the IRS finalizes regulations?

A: The December rule did not finalize the opt-out payment provisions in total. As such, employers are not required to consider opt-out payment established prior to December 16, 2015 as affecting affordability of coverage. Opt-out payment adopted after that date must be considered as affecting affordability.

Q: Earlier slides listed the Cadillac Tax delaying until 12/31/2024. However, you mentioned it as 12/31/2014, can you verify the date, please?

A: 2024.

Q: In your opinion only, do you think the employer mandate will survive into next year?

A: I just asked my Magic 8 ball and it said "no doubt about it." I haven't validated how often the Magic 8 ball is correct. But, there will be a lot of political pressure on Republicans to repeal this provision so – stay tuned.

Q: Any changes to a qualified MEC?

A: No.