

APPLICATION OF THE MARKET REFORMS AND OTHER PROVISIONS OF THE AFFORDABLE CARE ACT TO STUDENT HEALTH COVERAGE

Notice 2016-17

I. PURPOSE AND OVERVIEW

This notice provides guidance on the application of certain provisions of the Affordable Care Act¹ to premium reduction arrangements offered in connection with student health plans and provides temporary transition relief from enforcement by the Departments of the Treasury, Labor, and Health and Human Services (collectively, the Departments) in certain circumstances.

On September 13, 2013, the Treasury Department (Treasury) and the Internal Revenue Service (IRS) published Notice 2013-54,² 2013-40 IRB 287, addressing the application of the market reforms to health reimbursement arrangements and employer payment plans under the Affordable Care Act. The Department of Labor (DOL) contemporaneously published parallel guidance in Technical Release 2013-03³ and the Department of Health and Human Services (HHS) issued guidance stating that it concurs in the application of the laws under its jurisdiction as set forth in the guidance issued by DOL and Treasury and IRS.⁴ Subsequent guidance reiterated and clarified the application of the market reforms to employer payment plans.⁵ The guidance set

¹ The “Affordable Care Act” refers to the Patient Protection and Affordable Care Act (enacted March 23, 2010, Pub. L. No. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (enacted March 30, 2010, Pub. L. No. 111-152), and as further amended by the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (enacted April 15, 2011, Pub. L. No. 112-10). Section 1001 of the Affordable Care Act added new Public Health Service Act (PHS Act) §§ 2711-2719. Section 1563 of the Affordable Care Act (as amended by § 10107(b) of the Affordable Care Act) added Internal Revenue Code (Code) § 9815(a) and Employee Retirement Income Security Act (ERISA) § 715(a) to incorporate the provisions of part A of title XXVII of the PHS Act into the Code and ERISA, and to make them applicable to group health plans and health insurance issuers providing health insurance coverage in connection with group health plans. The PHS Act sections incorporated by these references are §§ 2701 through 2728. Accordingly, these referenced PHS Act sections (the market reforms) are subject to shared interpretive jurisdiction by the Departments.

² Notice 2013-54 is available at <http://www.irs.gov/pub/irs-drop/n-13-54.pdf>.

³ Technical Release 2013-03 is available at <http://www.dol.gov/ebsa/newsroom/tr13-03.html>.

⁴ See Insurance Standards Bulletin, Application of Affordable Care Act Provisions to Certain Healthcare Arrangements, September 16, 2013, available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/cms-hra-notice-9-16-2013.pdf>.

⁵ There have been several prior issuances on the topics addressed in this notice: (1) FAQs About Affordable Care Act Implementation (Part XI), issued on January 24, 2013 by DOL (<http://www.dol.gov/ebsa/faqs/faq-aca11.html>) and HHS (http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/acaImplementation_faqs11.html); (2) IRS Notice 2013-54 and DOL Technical Release 2013-03, issued on September 13, 2013; (3) IRS FAQ on Employer Healthcare Arrangements (<http://www.irs.gov/Affordable-Care-Act/Employer-Health-Care-Arrangements>). (4) FAQs About Affordable Care Act Implementation (Part XXII), issued on November 6, 2014 by DOL (<http://www.dol.gov/ebsa/faqs/faq-aca22.html>) and HHS (<http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-Part-XXII-FINAL.pdf>); Notice 2015-17, 2015-14 I.R.B. 845, issued by

out below provides a transition period for the application of certain market reforms to certain arrangements offered by an institution of higher education to its students that are designed to reduce the cost of student health coverage (whether insured or self-insured) through a credit, offset, reimbursement, stipend, or similar arrangement (a premium reduction arrangement).

The Departments continue to work together to develop coordinated regulations and other administrative guidance to assist stakeholders with implementation of the Affordable Care Act. The guidance in this notice is being issued in substantially identical form by DOL and HHS in separate guidance.

II. BACKGROUND

Under Notice 2013-54 (the 2013 guidance), an employer payment plan (EPP) is a group health plan under which an employer reimburses an employee for some or all of the premium expenses incurred for an individual market health insurance policy or directly pays a premium for an individual market health insurance policy covering the employee. EPPs and health reimbursement arrangements (HRAs) typically consist of a promise by an employer to reimburse medical expenses up to a certain amount. The 2013 guidance clarifies that such arrangements are subject to the group market reform provisions of the Affordable Care Act, including the prohibition on annual dollar limits under PHS Act section 2711 and the requirement to provide certain preventive services without cost sharing under PHS Act section 2713. That guidance generally provides that EPPs and HRAs will fail to comply with these group market reform requirements because these arrangements, by their very definition, include dollar limits on the amount of reimbursements or payments, and therefore violate the Affordable Care Act prohibition on annual dollar limits and the requirement to provide coverage of certain recommended preventive services without imposing any cost-sharing requirements.

The 2013 guidance further clarified that such employer health care arrangements will not violate the market reform provisions when integrated with a group health plan that otherwise complies with those provisions. Importantly, however, the 2013 guidance provided that these employer health care arrangements cannot be integrated with individual market policies to satisfy the market reforms. Consequently, such an arrangement may be subject to penalties, including excise taxes under section 4980D of the Code.

On March 21, 2012, HHS published a final rule (the student health insurance plan or SHIP rule) establishing requirements for student health insurance coverage under the PHS Act and the Affordable Care Act.⁶ The SHIP rule defines “student health

Treasury and IRS on February 18, 2015, and Notice 2015-87, 2015-52 I.R.B. 889, Q&A-1 to Q&A-6, issued by Treasury and IRS on December 16, 2015.

⁶ See 45 CFR 147.145.

insurance coverage” as a type of individual market health insurance coverage that is offered to students and their dependents under a written agreement between an institution of higher education (as that term is defined for purposes of the Higher Education Act of 1965) and an issuer.⁷

Many colleges and universities provide students (typically graduate students) with student health coverage at greatly reduced or no cost as part of their student package, which often includes tuition assistance and a stipend for living expenses. The student health coverage can be provided either through individual health insurance or through coverage that is self-insured by the college or university. For these students, the bill they receive from the school for the health coverage premium may take into account a premium reduction arrangement. Because some of these students also perform services for the school (such as teaching or research), the question has been raised whether such premium reduction arrangements might be employer-sponsored group health plans, and, as a result, might be viewed as EPPs that violate market reform provisions of the Affordable Care Act. Whether a particular arrangement constitutes a group health plan will depend on all of the facts and circumstances.

III. GUIDANCE

In many cases in which a college or university offers a premium reduction arrangement to its students, the payment arrangement will not constitute an EPP under the 2013 guidance. In other cases, however, such arrangements might meet the definition of an EPP. The Departments understand that some schools that have been offering such premium reduction arrangements might not have recognized at the time of the 2013 guidance that, in certain circumstances, the arrangements might constitute EPPs within the meaning of the 2013 guidance and, therefore, violate PHS Act sections 2711 and 2713 because they are not integrated with group health plan coverage and (as provided in the 2013 guidance and other guidance) cannot integrate with individual insurance coverage. As a result, the Departments recognize that schools may need additional time to adopt a suitable alternative or make other arrangements to come into compliance. Accordingly, the Departments will not assert that a premium reduction arrangement fails to satisfy PHS Act section 2711 or 2713 if the arrangement is offered in connection with other student health coverage (insured or self-insured) for a plan year or policy year beginning before January 1, 2017 (therefore including, for example, plan years or policy years that are roughly coterminous with academic years beginning in the summer or fall of 2016 and ending in 2017).

⁷ Student health insurance plans are regulated under the Affordable Care Act individual market reforms. See Affordable Care Act sections 1302 and 1201 (incorporating PHS Act section 2701). These requirements have been modified somewhat for student health insurance taking into account Congressional intent as expressed in section 1560 of the Affordable Care Act.

IV. APPLICABILITY DATE AND EFFECT ON OTHER DOCUMENTS

This notice applies for plan years beginning before January 1, 2017. This notice supplements the guidance provided in Notice 2013-54 and Notice 2015-87, 2015-52 IRB 889.

V. DRAFTING INFORMATION

This notice was prepared by personnel at the Health and Welfare Branch, Office of Associate Chief Counsel (Tax Exempt and Governmental Entities), Internal Revenue Service, with the development of the guidance including personnel at the Treasury Department, Department of Labor and Department of Health and Human Services. For further information regarding this guidance, contact the Department of Labor at (202) 693-8335 or the Internal Revenue Service at (202) 317-5500 (not a toll-free call).