

update

Compliance News for Plan Sponsors

March 7, 2016

Guidance on Subsidizing Student Health Coverage

The Departments of Treasury, Labor and Health and Human Services (the Departments), which are responsible for implementing group health plan standards under the Affordable Care Act, recently issued guidance on the application of certain provisions of the law to student health coverage that is subsidized by colleges and universities. The guidance provides temporary relief from enforcement by the Departments for plan or policy years beginning before January 1, 2017.¹

Background

Starting in 2013, the Departments released guidance addressing arrangements through which employers reimburse employees for medical expenses and/or health premiums. In the view of the Departments, employer-payment plans that reimburse employees for the cost of individual health insurance policies violate the market-reform provisions of the Affordable Care Act, such as the ban on annual dollar limits. This is the case even if the employer treats the payment or reimbursement as taxable income to the employee. Violations of these market reforms can trigger penalties of up to \$100 per day for each affected individual.

Many colleges and universities provide certain students (typically graduate students) with student health coverage at greatly reduced or no cost as part of their student package. Insured student health plans are regulated as individual health insurance. During the summer and fall of 2015, many higher education institutions expressed concern that providing subsidies for insured student health coverage to graduate students who are working as teaching or research assistants or in other positions might be considered an employer-payment plan that violates the market-reform provisions of the Affordable Care Act.

The Guidance

Notice 2016-17 addresses whether an arrangement provided to students (typically graduate students) who provide services such as teaching or research under which they receive reduced-cost health coverage would violate the Affordable Care Act's market-reform provisions. The Notice does not give clear guidance, but rather states that, in some cases, a premium-reduction arrangement would violate the Affordable Care Act, and in other cases it would not. Therefore, whether a particular arrangement constitutes a group health plan will depend on all of the facts and circumstances.



Health Compliance News Highlights:

- Higher education institutions that subsidize student health coverage for student employees need to look carefully at the arrangement in light of the new guidance.
- Depending on the facts and circumstances, the arrangement could violate the Affordable Care Act's market-reform rules.
- The non-enforcement policy announced by the Departments applies to plan or policy years beginning before January 1, 2017.

¹ [Treasury Notice 2016-17](#) is available on the IRS website. The other Departments issued separate guidance documents that are substantially similar.

The Departments acknowledge that a college or university might have an arrangement that it did not know might be an impermissible arrangement, so the Departments announced a non-enforcement policy for plan years or policy years beginning before January 1, 2017. This includes plan years or policy years that are roughly coterminous with academic years beginning in the summer or fall of 2016 and ending in 2017. Consequently, it appears likely further guidance could be issued later this year.

Subsidizing group health coverage for student employees through an institution's group health plan for its employees would not raise the same Affordable Care Act concerns, because that group coverage complies with the market-reform provisions of the Affordable Care Act. Institutions that self-insure student health plans may also take advantage of the non-enforcement policy, while waiting for clarification as to how these rules apply to them. (Institutions with self-insured student health plans for plan or policy years beginning on or after January 1, 2015 must apply to be recognized as "minimum essential coverage" in order for that coverage to meet requirements under the Affordable Care Act's individual mandate).²

Implications

The Notice does not take the position that colleges and universities cannot subsidize student health insurance for working students. However, in fact-dependent circumstances, the subsidization could be impermissible under the Affordable Care Act. Institutions should monitor future regulatory guidance.

Institutions may wish to look more broadly at all of the insurance programs they provide for students and employees and pay particular attention to how they are covering those who fit in the middle: the graduate students who are also employees. It may be appropriate to offer different arrangements to undergraduate students and graduate students. Alternatively, students who are employees could be offered coverage under a self-insured or insured group health plan, while those who are not employees are offered individual student health insurance. In any arrangement, the institutions should review issues associated with the Affordable Care Act's market-reform rules and employer-penalty rules.

Pending future guidance, institutions should review their student health coverage arrangements with the following questions in mind:

- What are the terms and conditions of the reimbursement or premium-reduction arrangement?
- Is the student health coverage insured or self-insured?
- Is reimbursement or premium reduction based on student-status or status as an employee?
- How are students who meet the definition of "full-time employee" treated under the institution's strategy for avoiding the employer shared responsibility penalty?

Careful analysis of student health arrangements can ensure that the offerings continue and that future activity regarding these health plans keeps them all aligned with the multitude of Affordable Care Act requirements.

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² See the [Minimum Essential Coverage](#) page of the Centers for Medicare & Medicaid Services' website.

Questions?

For more information about the application of the Affordable Care Act rules to your student health insurance program, please contact your Sibson consultant or the [Sibson office nearest you](#).

How Sibson Can Help

Sibson can be retained to work with institutions and their attorneys on compliance issues.

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