



Compliance Update - 05/10/2016

Affordability Determination, Government Entities, and Benefits Administered by the VA and HSAs

Gathering information for Forms 1094-C and 1095-C filings and statements is a tedious job. Making sure you have all the moving parts and that they fit together – almost impossible. That's why the Internal Revenue Service (IRS) provided additional guidance on calculating affordability of employer-sponsored health coverage and governmental entities as controlled groups. Also included in this potpourri of weighty subject matters is advice for Health Savings Account (HSA) beneficiaries seeking Veterans Affairs (VA) healthcare.

IRS [Notice 2015-87](#), released December 16, 2015, discusses issues associated with determining the affordability of coverage offered by employers, government entity reporting, and how VA benefits integrate with Health Savings Accounts (HSAs). This is the first of three Compliance Alerts we will issue to address the various topics covered by the Notice.

Affordability of Employer-Sponsored Health Coverage

An applicable large employer (ALE) may be subject to an assessable payment for any month in which a full-time employee has received a premium tax credit in connection with enrollment in a qualified health plan through the Marketplace. However, an employee is not eligible for the premium tax credit if the employee is eligible for coverage under an eligible employer-sponsored plan that provides minimum value (MV) and is affordable, or if the employee enrolls in an eligible employer-sponsored plan, regardless of whether the plan is affordable or provides minimum value.

Affordability calculations must be performed for each employee to determine if an offer of coverage is affordable. The employee's required contribution for self-only coverage can be no more than 9.66 percent (2016 indexed figure) of the employee's household income. Required contribution calculations may include or exclude funds from other benefits, as discussed below.

Health Reimbursement Arrangements

The employee's required contributions may be offset by amounts made available for the current plan year from an HRA. If the HRA is integrated, it can be used to pay premiums for eligible employer-sponsored health plans, or used for cost-sharing and other health benefits not covered by that plan. Those funds can be used to reduce the employees' required contributions, to get it under the 9.66 percent of household income threshold. The contribution level and terms of the HRA plan must be provided to employees within a reasonable time before enrollment for overall healthcare coverage decisions.

Here's an example: Assume employees' contributions to the employer's major medical group health plan is \$200 per month for self-only coverage and the HRA makes \$1,200 available annually for major medical coverage, cost-sharing, or vision and dental expenses. In this example, the \$1,200 annual employer contribution to the HRA reduces employees' required contributions for the major medical plan to \$100. ($\$200 - (\$1,200/12) = \100). This is true, whether or not employees use the HRA funds for the employer's major medical coverage.

Flex Credits to a Cafeteria Plan

Employer flex credits to a cafeteria plan can also offset the affordability calculation if the employee may:

- Not opt out to receive the amount as a taxable benefit;
- Use the amount to pay for minimum essential coverage; and
- Use the amount exclusively to pay for eligible medical care.

If employers' flex credits can be used for other expenses such as daycare, dental, or group-term life insurance, it is not appropriate to assume that the employee would use the flex credits to pay for health coverage. Employees might choose to use employer flex credits for other, non-health benefits. If flex credits are available in cash or for other benefits, then they cannot be used as health benefits and used for reducing employees' obligations for premium payments. However, if an employer's plan is structured, as an example, to provide \$1,200 in medical flex credits and \$500 in non-medical flex credits, \$100 ($\$1,200/12$) can be used to reduce the employee's affordability calculation.

Opt Out Employer Payments Count Against Affordability

Plans that provide funds to employees who decline coverage under an eligible employer-sponsored plan must take into account the amount of the opt out for purposes of determining whether an ALE has made an offer of affordable minimum value coverage and whether employees' required contributions exceed the applicable 9.66 percent (2016) of household income. An opt out plan obligates employees to forgo the opt out amount offered in order to pay for and receive health insurance coverage.

As an example – employees who must reduce their compensation by \$100 per month to pay for employer-provided health coverage have a choice much like employees who receive employer-pay-all health insurance, but who would receive an additional \$100 per month in compensation only if they declined coverage. In either case, the price for obtaining employer-provided health coverage is forgoing \$100 each month in compensation that otherwise would be available to the employees.

An opt out payment has the effect of increasing employees' contributions for health coverage. In the example above, employees choosing health insurance coverage lose the right to an additional \$100 per month in compensation, plus they must pay \$100 per month for the coverage. The net effect? Employees are deemed to pay \$200 per month for healthcare coverage going toward the affordability calculation.

Applicable Large Employers and Controlled Groups

IRS Regulations do not specifically address the application of controlled groups, common control, or affiliated service groups as they apply to government entities.

Therefore, government entities may apply a reasonable, good faith interpretation of the employer aggregation rules for purposes of determining whether they are an ALE and subject to the employer shared responsibility.

In addition, each separate employer entity (not applying any aggregation rules) that is an ALE or provides self-insured health coverage to its employees, must use its own employer identification number (EIN) for purposes of the applicable Form 1094/1095 reporting requirements.

Veterans and HSAs

There has been an on-going discussion surrounding veterans receiving medical benefits from the VA and the resulting ineligibility to contribute to HSAs. This Notice simplifies previous instructions for veterans.

Previously, an individual actually receiving medical benefits from the VA at any time in the previous three months generally was not eligible to contribute to an HSA, unless the medical benefits consisted solely of disregarded coverage or preventive care.

The "Surface Transportation Act" modified the rules further by stating an individual actually receiving medical benefits from the VA is not disallowed from making HSA contributions if the medical benefits consist solely of disregarded coverage, preventive care, or hospital and medical services for service-connected disability. As a practical matter, distinguishing between services at the VA is complex and onerous for veterans. Notice 2015-87 simplifies the modified rules by affirming that any hospital care or medical services received from the VA by a veteran with a disability rating from the VA is considered for service-connected disability. Thus, any veteran with a disability rating and who receives hospital care or medical services from the VA is no longer ineligible from making HSA contributions.

Forms 1094/1095 Filings

It might have been a wild ride for employers sending out their first Forms 1094-C and 1095-C for the 2015 year. Concerns arise about accuracy and completeness, but forms went out the door to the applicable recipients. In a nod to the complexity involved with these filings, the IRS provided limited relief from penalties under IRS Code Sections 6721 and 6722 to ALEs filing Forms 1094-C and 1095-C for 2015.

If ALEs show they exercised good faith efforts to comply with the information reporting requirements and filed a timely return, relief is provided for incorrect returns and statements filed and furnished in 2016 to report offers of coverage in 2015. The relief also includes minimum essential coverage (MEC) filings.

A review of all your employee health and welfare benefits is a key component of determining affordability of coverage offered to employees; which in turn, assures compliance with current ACA reporting requirements.

Sincerely,
Your Team at WageWorks



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