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Health Care Reform Act Proposed Regulations Clarify Employer Penalties

The Internal Revenue Service recently released proposed regulations, along with questions and answers, on the employer penalty provisions in the Health Care Reform Act (HCRA). These proposed rules apply to “applicable large employers” beginning in 2014 and may be relied upon until final regulations are issued. An “applicable large employer” is an employer which employs 50 or more full time or “full-time equivalent” employees in the prior plan year.

The HCRA imposes a potential monetary penalty on large employers that (i) do not offer full-time employees minimum essential coverage, or (ii) offer coverage that is either unaffordable or that does not provide minimum value. The proposed rules incorporate many provisions of previously issued guidance and contain a variety of new items, including the following:

- The rules clarify that a large employer must offer coverage to “substantially all” full-time employees and their dependents. “Substantially all” means that an employer must offer coverage to at least 95% of all full-time employees and dependents.
- Employers must offer coverage to full-time employees *and* dependent children up to age 26 in order to avoid penalties after the 2014 plan year. However, there is no requirement that the employer offer coverage to an employee’s spouse, and dependent coverage does not have to be “affordable”.
- The rules clarify that the shared responsibility requirements are generally applied separately to each member of a controlled group. Although all members of a controlled group are used to determine whether any member of the group is an applicable large employer subject to the employer shared responsibility provisions, each member is treated separately for purposes of determining liability for, and the amount and payment of, any shared responsibility penalty.
- Safe harbors for determining whether the employer’s health coverage is affordable have been expanded. The general safe harbor which

considers an employer's health coverage unaffordable if the employee contribution for the lowest employee-only coverage option exceeds 9.5% of the employee's Form W-2 wages for the calendar year, has been expanded to include two additional safe harbor options – one for the rate of pay and one for the federal poverty line.

- The proposed rules include special transition relief for non-calendar year plans in existence as of December 27, 2012, and that either (i) cover at least 1/4 of the employer's employees, or (ii) offer coverage to 1/3 or more of the employer's employees. If an employer with one of these non-calendar year plans offers employees affordable coverage that satisfies the minimum value requirement by the first day of the plan year starting in 2014, that employer would not be assessed a shared responsibility penalty for any period in 2014 prior to the beginning of the 2014-2015 plan year.

There are many other nuances and additional items contained in the proposed rules. We will provide a more expansive client alert that will be distributed shortly. In the meantime, if you have any questions, please let us know.

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