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BLOG

FAQs Clarify Treatment of Expatriate Health Plans Under the Affordable Care Act

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In recognition of the difficulties expatriate health plans may face in complying with Affordable Care Act requirements, FAQs issued by the Departments of Labor, Health and Human Services (HHS), and the Treasury (collectively, the Departments) clarify the Departments' previously issued guidance addressing the treatment of expatriate health plans under the Affordable Care Act, including the transitional exemption these plans have from most Affordable Care Act mandates. Note that our January 14, 2014 Benefits Blast discussed clarifications related to essential health benefits under these same FAQs.

The new FAQs clarify and expand the previous guidance in the following respects:

- The exemption applies to insured group health plans with respect to which enrollment is limited to "primary insureds for whom there is a good faith expectation that such individuals will reside outside of their home country or outside of the United States for at least six months of a 12-month period and any covered dependents, and also with respect to group health insurance coverage offered in conjunction with the expatriate group health plan." The 12-month period can fall within a single plan year or across two consecutive plan years (previously issued guidance indicated that this requirement would need to be met for each plan year).
- Expatriate health plans are exempt from essential health benefit requirements, including cost-sharing limits, provided that the expatriate health plan complies with pre-Affordable Care Act rules.
- The expatriate health plan exemption is extended through plan years ending on or before December 31, 2016 (previously issued guidance limited the exemption to plan years ending on or before December 31, 2015).

It is important to note that coverage under qualifying expatriate health plans is a form of minimum essential coverage. As a result, an employer who offers coverage under a qualifying expatriate health plan will not be treated as having failed to provide coverage to an expatriate for purposes of employer "pay or play" penalties that take effect in 2015. Further, employees who are covered by a qualifying expatriate health plan will not be subject to the individual coverage mandate tax that is now in effect.

Employers who maintain expatriate health plans are well advised to review their plans and provider agreements to ensure exemption requirements are met (which include compliance with pre-Affordable Care Act rules and other

applicable laws). An expatriate plan that is not exempt and that fails to meet Affordable Care Act requirements can expose its plan sponsor to penalties and significant excise taxes.

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