

Prohibition on Pre-Tax Reimbursement of Individual Insurance Policy Premiums December 30, 2013

By: Attorney Danny Miller, Conner & Winters

For many years, employers have been permitted to reimburse employees for or directly pay the cost of individual health insurance policy premiums and exclude such amounts from the employee's gross income. However, recent Internal Revenue Service ("IRS") guidance described below effectively eliminates these "employer payment plans" after this year.¹

IRS Notice 2013-54, which was issued in September 2013, essentially prohibits the use of employer payment plans regardless of whether the individual insurance policy would be purchased through a Health Care Exchange or outside of a Health Care Exchange. The notice is effective for plan years beginning on or after January 1, 2014.

Notice 2013-54 provides that employer payment plans are group health plans subject to the market reform provisions of the Affordable Care Act ("ACA"), including the prohibition on annual limits and the requirement to provide certain preventive care services with no cost sharing. The notice confirms that because employer payment plans are considered to impose an annual limit of the cost of the individual insurance policy purchased through the arrangement and do not provide preventive services without cost sharing in all instances, such plans will, by design, violate the requirements of the ACA. According to the IRS, employer payment plans cannot be integrated with the individual insurance policies purchased under the plans in order to satisfy these requirements. That means that employer payment plans will violate the requirements of the ACA even if the employees covered under the plan purchase individual insurance policies that comply with the ACA.

An employer is still allowed to establish an arrangement under which an employee may choose between cash or an after-tax amount to be applied toward health coverage. The employer is just not permitted to provide reimbursement on a pre-tax basis. In addition, the notice would permit an employer to establish a payroll practice of forwarding post-tax employee wages to an insurance company at the direction of the employee, as long as the requirements described in the notice are satisfied.

Accordingly, for plan years beginning on or after January 1, 2014, employers will need to either eliminate employer payment plans or modify such arrangements to reimburse employees for health coverage on an after-tax basis.

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¹ It does not appear that the guidance would prohibit employers from establishing employer payment plans that reimburse premiums for HIPAA-excepted coverage, such as limited-scope dental or vision coverage.

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