

Employers: Beware of “Dumping” Employees on a Government Health Insurance Marketplace.

Article Overview:

- There are consequences to having employee health insurance reimbursement plans.
- Health insurance reimbursement plans do not qualify as employer group plans to satisfy the employer insurance mandate.
- Penalties can be as high \$100 per day per employee for not having a qualified plan.

The IRS earlier this year cautioned employers of the consequences when an employer reimburses its employees for the cost of premiums the employees pay to purchase qualified health plans, either through a health insurance marketplace or outside the marketplace, rather than establishing a health insurance plan for its own employees.

Employers may think they can use this strategy to avoid the employer insurance mandate required by the Affordable Care Act that applies to mid- and large-size firms, as well as shift some of the expense of providing employee health care away from the employer. Not so, says the IRS, which refers to this method of avoiding the employer insurance mandate as a “dumping” strategy.

This type of arrangement, termed an “employer payment plan,” is considered a group health plan by the IRS, and as such, is subject to the reform provisions of the Affordable Care Act (ACA) and the penalty that applies for failing to meet those provisions. These reforms include a prohibition on the annual limits for essential health benefits and a requirement to provide certain no-cost-sharing preventive care. Employer payment plans can’t be integrated with individual policies to achieve the market reform requirements, and therefore they fail to satisfy the market reform requirements. As a result, the employer may be subject to a \$100/day per employee excise tax penalty amounting to \$36,500 per year per employee for failure to meet the ACA provisions.

However, an employer payment plan does not include an employer-sponsored arrangement under which an employee may choose either cash or an *after*-tax amount to be applied toward health coverage. Individual employers may establish payroll practices of forwarding post-tax employee wages to a health insurance issuer at the direction of an employee without establishing a group health plan.

The employer group insurance mandate takes effect in 2015 for larger employers (those with 100 or more full-time employees) and in 2016 for employers with 50 to 99 full-time employees that meet certain conditions. Employers with fewer than 50 full-time employees are not required to provide health insurance coverage for their employees.

One last item: because an employer payment plan is considered a group health plan, the employees participating in such an arrangement who purchase their health coverage through a marketplace cannot claim the premium assistance credit because employees who have an employer plan are not eligible for the credit.

If you have further questions related to this issue, please give this office a call.