

HEALTH CARE REFORM: NEW GUIDANCE ON CASH-IN-LIEU AND AFFORDABILITY UNDER THE EMPLOYER MANDATE

Under the Affordable Care Act (ACA), an Applicable Large Employer may be subject to a penalty if it does not offer its full-time employees affordable, minimum value (MV) coverage. As discussed in our August and November 2015 *Briefings* (see links below), waivers of coverage and cash-in-lieu of benefits raise several issues that employers must address, including new considerations introduced by the ACA. The Internal Revenue Service (IRS) recently issued Notice 2015-87 that address a key ACA issue – how cash-in-lieu is treated when determining if coverage is affordable under the Employer Mandate.

http://www.keenan.com/news/brief/2015/BRF_20150824_HCRCashInLieu_KA.pdf

http://www.keenan.com/news/brief/2015/BRF_20151119_HCRWaiversCoverageCashInLieu_KA.pdf

PROPOSED REGULATIONS FORTHCOMING

The IRS stated it plans to issue proposed regulations that will require the amount offered as cash-in-lieu to be included as part of the employee's required monthly contribution for the cost of coverage. For example, assume an employer offers its employees coverage under a group health plan through a §125 cafeteria plan. The employee's required monthly contribution for the lowest cost self-only coverage that provides MV is \$100 per month but employees can take \$150 as cash-in-lieu of benefits.

For purposes of the Employer Mandate "B" penalty and the related reporting on Line 15 of IRS Form 1095-C, the employee's required contribution for the group health coverage is \$250 per month. This is true regardless of whether the employee actually enrolled in the lowest cost self-only coverage that provides MV or took cash-in-lieu. It is true even if the employee enrolled in a more expensive plan offered by the employer. From the IRS' perspective, an employee would not only have to pay \$100 per month for that lowest cost self-only coverage but would also lose \$150 in cash each month by enrolling in the plan, which makes the effective cost \$250 per month.

The preliminary guidance only addresses "unconditional" cash-in-lieu arrangements – i.e., those not tied to proof of other group coverage. The IRS plans to address "conditional" cash-in-lieu arrangements – i.e., those tied to proof of other group coverage – in the forthcoming regulations. At this point, it is unclear how the IRS will treat those types of arrangements.

EFFECTIVE DATE OF GUIDANCE

The effective date for this new guidance differs for cash-in-lieu arrangements adopted on or before December 16, 2015 and those adopted after that date. Those adopted on or before December 16, 2015 will not need to comply with the new guidance until final regulations are issued. For arrangements adopted after December 16, 2015, the new guidance is effective now.

A cash-in-lieu arrangement will be treated as being adopted after December 16, 2015 unless: (1) the employer offered the cash-in-lieu arrangement (or a substantially similar arrangement) for a plan year including December 16, 2015; (2) a board, committee, or similar body or an authorized officer of the employer specifically adopted the arrangement before December 16, 2015; or (3) the employer had provided written communications to employees on or before December 16, 2015, indicating that the arrangement would be offered to employees at some time in the future.

NEXT STEPS

Employers with cash-in-lieu arrangements adopted on or before December 16, 2015 should: (1) begin evaluating the impact of this guidance on the affordability of their lowest cost self-only coverage that provides MV, (2) consider restructuring the cash-in-lieu arrangement, if necessary, to ensure the lowest cost self-only coverage that provides MV is affordable, and (3) wait for further guidance.

As discussed above, the IRS still plans to address “conditional” cash-in-lieu arrangements and, at this point, it is not clear how they will be treated under the new regulations. In addition, the IRS has not provided a time frame for when proposed or final regulations may be issued; therefore, it is not clear when employers with established cash-in-lieu arrangements will need to come into compliance.

Any employers with cash-in-lieu arrangements adopted after December 16, 2015 must comply with the new guidance effective immediately. Accordingly, they should evaluate the impact of the guidance on the affordability of their lowest cost self-only coverage that provides MV. If the guidance makes the coverage unaffordable, they should consider restructuring the cash-in-lieu arrangement to make coverage affordable.

Please contact your Keenan Account Manager for questions regarding this *Briefing* or if you require any additional information regarding the Affordable Care Act.

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