

HEALTH CARE REFORM: CLARIFICATION ON EMPLOYER PAYMENT PLANS

The Internal Revenue Service (IRS) Office of the Chief Counsel recently released two Information Letters addressing cash-in-lieu arrangements and reimbursement of individual health policy premiums. The underlying question is whether these situations create Employer Payment Plans.

An Employer Payment Plan is a group health plan under which the employer either reimburses an employee for premiums paid for an individual health insurance policy or directly pays the premiums. These plans generally do not comply with the Affordable Care Act (ACA) because they impose annual or lifetime dollar limits on essential health benefits. These violations can result in substantial penalties.

Information Letter 2016-0019 reiterates earlier guidance about Employer Payment Plans and explains that these arrangements create a group health plan with an annual dollar limit on essential health benefits. The IRS notes employers should be suspicious of companies marketing products that claim they can reimburse individual health policy premiums without violating ACA rules.

Information Letter 2016-0023 clarifies that cash-in-lieu arrangements do not create noncompliant Employer Payment Plans if the additional taxable compensation is unrelated to the cost of the employee's other coverage. Based on previous IRS guidance, we recommended that employers offering cash-in-lieu upon proof of other coverage should exclude proof of individual coverage to avoid creating an Employer Payment Plan. Based on this clarification, an employer could include proof of individual coverage if the cash-in-lieu is unrelated to the cost of the individual coverage.

This letter again raises the issue that cash-in-lieu arrangements may impact whether coverage is affordable under the Employer Mandate. The IRS 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 more information, see our February 2016 *Briefing*.

http://www.keenan.com/news/brief/2016/BRF_20160210_HCRCashInLieu_KA.pdf

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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