

HEALTH CARE REFORM: UPDATE ON OPT-OUT PAYMENTS & AFFORDABILITY

Under the Affordable Care Act (ACA), an Applicable Large Employer (ALE) may be subject to a penalty if it does not offer its full-time employees affordable, minimum value (MV) coverage. The Internal Revenue Service (IRS) previously issued proposed regulations outlining how employers must treat opt-out payments (i.e., cash-in-lieu of benefits) when determining if their coverage is affordable under the Employer Mandate. More information on the proposed regulations is available in our July 2016 *Briefing*:

http://www.keenan.com/news/brief/2016/BRF_20160719_HCRProposedRegulationsOpt-OutPayments_KA.pdf

The IRS stated ALEs would not be required to comply with the new requirements until final regulations were issued, which they expected to release by the end of 2016. Accordingly, it was expected ALEs would be required to comply starting the first day of the 2017 plan year.

On December 19, 2016, the IRS issued final regulations but they did not finalize the proposed rules on opt-out payments. Instead, they are continuing to examine issues raised by opt-out payments and expect to finalize regulations at a later date. Until final regulations are issued, ALEs may continue to rely on earlier guidance provided in IRS Notice 2015-87 and the proposed regulations:

- ALEs with “conditional” opt-out arrangements (i.e., those tied to proof of other group coverage) are not required to include an amount offered as cash-in-lieu as part of an employee’s required monthly contribution until final regulations are issued.
- ALEs with “unconditional” opt-out arrangements (i.e., those not tied to proof of other group coverage) adopted on or before December 16, 2015 are also not required to include an amount offered as cash-in-lieu as part of an employee’s required monthly contribution until final regulations are issued.
- ALEs with “unconditional” opt-out arrangements adopted after December 16, 2015 are required to include an amount offered as cash-in lieu as part of an employee’s required monthly contribution unless the arrangement is required under a collective bargaining agreement that was in effect before December 16, 2015 (disregarding any extensions on or after December 16, 2015).

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

Keenan & Associates is not a law firm and no opinion, suggestion, or recommendation of the firm or its employees shall constitute legal advice. Clients are advised to consult with their own attorney for a determination of their legal rights, responsibilities and liabilities, including the interpretation of any statute or regulation, or its application to the clients’ business activities.