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IRS Issues Guidance on Premium Reimbursement Arrangements

In new [frequently asked questions \(FAQs\)](#), the agencies clarify a [prior rule](#) that addressed employers who wish to assist employees in purchasing individual—rather than employer-sponsored—health coverage. The FAQs make it clear that an employer cannot reimburse employees for insurance premiums in the public exchanges, whether on an after-tax or a pre-tax basis, as an alternative to offering a group health plan in the workplace. Specifically:

- Employers cannot provide cash reimbursement (pre-tax or after-tax) for the purchase of individual market policies, including individual policies through public exchanges. If an employer reimburses employees for the individual policies, the employer has established a group health plan because the arrangement's purpose is to provide medical care. The employer cannot avoid this result by treating reimbursements as after-tax payments. These types of arrangements will violate the Affordable Care Act (ACA) prohibition on lifetime and annual dollar limits on essential health benefits (EHBs) and preventive services requirements.
- Employers cannot offer employees with high claims risk a choice between cash or enrollment in employer-sponsored group health plans. These arrangements will violate the Health Insurance Portability and Accountability Act (HIPAA) nondiscrimination provisions.
- Employers cannot cancel their group plans and offer a reimbursement plan that works with health insurance brokers or agents to help employees select individual insurance policies, and allow eligible employees to access the premium tax credits for public exchange coverage. These types of arrangements are group health plans and are subject to the market reforms and, therefore, will violate the ACA's prohibition on lifetime and annual dollar limits on EHBs and preventive services requirements.

Prior guidance allows arrangements under which employees may freely choose between cash and an after-tax amount to be applied toward health coverage—and these arrangements seem unaffected by the FAQs. But these new FAQs now clarify the prior guidance on employer payment plans and make it clear that any arrangement that provides cash (pre- or after-tax) only if the employee purchases an individual policy would violate health care reform. See our prior [Update](#) on this issue and note that it is now clear that premium reimbursement arrangements provided on an after-tax basis are not permissible.

Employers contemplating or using these plan designs should review the FAQs carefully as non-compliant arrangements can trigger \$100 per employee/per day penalties. Should you have any questions, please contact your Conner Strong & Buckelew account representative.



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