



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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The Honorable Robert Hurt
Member, U.S. House of Representatives
686 Berkmar Circle
Charlottesville, VA 22901

Attention:

Dear Representative Hurt:

I am responding to your inquiry, on behalf of your constituent, who wrote about the ability of employers to reimburse premiums for employee's individual health insurance policies on a tax-free basis.

An employer may reimburse employees for the medical expenses of the employee and the employee's family and exclude those amounts from the employee's income and wages under section 105(b) of the Internal Revenue Code. Although the ACA did not change the tax treatment of the reimbursement for employee medical expenses, the ACA did enact certain market reforms that apply to group health plans. The arrangements described are considered to be group health plans and must satisfy the ACA market reform rules, which are under the joint jurisdiction of the Departments of the Treasury, Labor and Health and Human Services (together referred to in this letter as the Departments). These rules apply to employer-provided health coverage regardless of the size of the employer and regardless of whether the employer is subject to the employer shared responsibility provision of section 4980H.

One of the Departments' requirements for group health plans is they cannot impose an annual or lifetime dollar limit on essential health benefits under section 2711 of the Public Health Service Act. An agreement by the employer to reimburse medical expenses up to a fixed amount is a group health plan under which there is an annual

limit on essential health benefits. Therefore, it fails to comply with the prohibition on annual limits under section 2711.

If an employer offers a group health plan that satisfies the market reform rules by providing coverage for essential health benefits without annual limits in addition to a separate arrangement to pay for other medical expenses, the group health plan and the separate arrangement generally may be combined to determine if together the combined arrangement satisfies the market reforms. See Notice 2013-54 (2013-40 I.R.B. 287) and Notice 2015-87 (2015-52 I.R.B. 889). If the employer does not offer the employee a group health plan and the employee obtains other coverage, such as when the employee is covered by an individual health insurance policy, the separate arrangement cannot be combined with that other coverage to determine if it satisfies the market reform rules for group health plans. Consequently, the arrangement to reimburse the individual health policy premiums would violate the market reforms.

As noted, one option for an employer who does not want to offer coverage under a group health plan to its employees is to provide additional compensation to the employee that the employee may use for any purpose, including the purchase of an individual health policy. That amount would be taxable and the employer would not have a group health plan that fails to satisfy the market reforms.

also notes a product some promoters market that alleges use of the product allows employers to reimburse individual health policy premiums without violating the Departments' market reforms. did not include the specifics of the arrangement and regardless we would not be able to provide a formal opinion on a particular arrangement. However, we have been made aware of a number of these schemes, and in looking at the information we have been presented we disagree with the promoters' claims that their product does not impose an annual limit on essential health benefits. Consequently, their product fails to meet the market reforms.

I hope this information is helpful. If you have any questions, please call me at
or at .

Sincerely,

Christine Ellison, Acting Chief,
Health and Welfare Branch,
Office of Associate Chief Counsel
(Tax Exempt and Government Entities)