

Private Exchanges and Employers

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ERISA Impacts

- Yes, the health coverage offered is a “plan”
 - Most private exchange coverage is a “group” not “individual” coverage
 - Must meet ERISA requirements such as reporting, disclosure
 - Bundled with larger ERISA plan to reduce compliance burdens

Group Policy Considerations

- Cost differentials associated with insured group coverage
 - State-based insurance premium taxes
 - New annual fee imposed on insurers under the ACA
- Potential limitations on geographic differences in plan design
- Potential impact of state law on eligibility
 - E.g., state mandates

Does the Employer Care?

- If employer is subject to “pay-or-play,” private exchange allows employer to provide coverage and escape the 4980H(a) and (b) penalties
 - All compliance issues noted may therefore not be a burden and will likely mean less administration for employer
- Employer might decide to “pay” instead of “play,” in which case an Exchange providing individual coverage is an option

Individual Coverage

- If made available by an employer
 - Does the coverage meet the DOL voluntary safe harbor
 - No contributions made by the employer
 - Participation is completely voluntary for employees
 - The sole function of the employer, without endorsing the program, is to permit the insurer to publicize the program, collect premiums through payroll deduction, and remit to insurer
 - Employer receives no remuneration
- Employer does not escape pay-or-play

Individual Coverage (cont'd)

- If made available by an employer and falls outside of safe harbor - the “Catch-22”
 - May be a “plan,” subject to ERISA, HIPAA, COBRA, and ACA requirements
 - Consequences of non-compliance are significant - in some cases penalties up to \$1,100 per day
 - How to comply with COBRA???
 - HIPAA = compliance with special enrollment and nondiscrimination
 - Easier said than done individually, underwritten policies are inconsistent with and cannot comply with HIPAA
 - Individual underwriting has been found to violate HIPAA’s health status nondiscrimination rules

The “Defined Contribution Plan”

- Use of a defined contribution approach to minimize financial exposure
 - Employer establishes a fixed financial contribution which employees can use to select a variety of benefit options
 - HRA as the vehicle

The “Defined Contribution Plan” (cont’d)

- ACA issues:
 - Those previously mentioned (“pay-or-play,” HIPAA)
 - State laws
 - Majority of states have adopted the NAIC Small Employer and Individual Health Insurance Model Act
 - E.g., annual/lifetime benefit limit
 - Agency FAQ’s indicate that an employer’s HRA arrangement cannot be “integrated” with individual policy coverage to satisfy this requirement
 - Recent agency guidance has virtually foreclosed all employer pre-tax funding of individual medical policies for active employees
 - Would not include an after-tax funded arrangement that satisfies the ERISA safe harbor requirements

The Retiree-Only Option

- A separate retiree-only option avoids the HRA integration option
 - Pre- and post-65
- Can be individual coverage, the HRA is the group health plan
- Documentation is very important

Questions?

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