

Congress Clarifies the Expatriate Health Coverage Exemption

February 2, 2015

For expatriate health plans issued or renewed on or after July 1, 2015, the Expatriate Health Coverage Clarification Act of 2014 (EHCCA) provides an exemption from various Affordable Care Act (ACA) provisions. Last December, Congress enacted the EHCCA as Division M of the Consolidated and Further Continuing Appropriations Act, 2015.....

For expatriate health plans issued or renewed on or after July 1, 2015, the Expatriate Health Coverage Clarification Act of 2014 (EHCCA) provides an exemption from various Affordable Care Act (ACA) provisions. Last December, Congress enacted the EHCCA as Division M of the Consolidated and Further Continuing Appropriations Act, 2015. Section 3(a) of the EHCCA clarifies that the ACA and certain titles of the Health Care and Education Reconciliation Act of 2010 do not apply to (1) expatriate health plans, (2) employers that sponsor those plans, and (3) expatriate health insurance issuers (with respect to the expatriate coverage). Notably, the EHCCA does not provide an exemption from the coverage reporting requirements in Internal Revenue Code (IRC) sections 6055 and 6056 (except a more liberal electronic delivery rule applies) and does not exempt sponsors from the excise tax on high cost employer-sponsored coverage in IRC section 4980I for individuals with highly specialized skill sets and expertise temporarily assigned (not transferred) to the United States for specific employment-related purposes.

Defining “Expatriate Health Plan”

The EHCCA’s definition of “expatriate health plan” is two-fold. First, to qualify for the ACA exemption, the plan either must be (1) a group health plan, (2) health insurance offered in connection with a group health plan, or (3) health insurance offered to a group of similarly situated individuals formed for a tax-exempt purpose or other purpose that does not include the sale of health insurance coverage. This last group may include spouses, dependents, students, missionaries, or other individuals.

Expatriate health plans must provide coverage primarily to expatriates. The EHCCA expressly requires that substantially all of the primary enrollees of an expatriate health plan consist of “qualified expatriates” who are not U.S. nationals residing in their home countries. “Qualified expatriates” include:

- individuals whose skills and expertise precipitate a transfer to the United States for specific and temporary employment-related purposes (Group A Qualified Expatriates);
- individuals working outside of the United States for at least 180 days in a consecutive 12-month period that overlaps the plan year (Group B Qualified Expatriates); and
- individuals who are members of a group formed for a tax-exempt purpose or other purpose related to traveling or relocating internationally (e.g., missionaries and students), except purposes related to the sale of health insurance coverage (Group C Qualified Expatriates).

EHCCA Coverage Requirements

After satisfying the basic definition, the EHCCA's second requirement focuses on coverage. The group health plan or insurance policy generally must:

- provide benefits that, substantially all of which, are not HIPAA-excepted;
- provide inpatient hospital, outpatient facility, physician, and emergency service;
 - for Group A Qualified Expatriates, generally both in the United States and in the countries from which these individuals were transferred or assigned
 - for Group B Qualified Expatriates, generally in the country these individuals reside in due to their employment arrangements and
 - for Group C Qualified Expatriates, in the countries that the Secretaries of Health and Human Services, Treasury, and Labor designate
- offer dependent coverage until age 26, if the plan or policy provides dependent coverage for children (unless the individual is the child of another child already receiving dependent coverage);
- be issued by an expatriate health plan issuer, or administered by an administrator, that has licenses to sell expatriate health coverage in more than two countries, along with:
 - network provider agreements with healthcare providers in eight or more countries that provide for direct claims payments
 - call centers in three or more countries with an ability to accept calls from customers in eight or more languages
 - annual claims processing that totals at least \$1,000,000 in foreign currency equivalents
 - global evacuation/repatriation coverage; and
 - legal and compliance resources in three or more countries;
- offer reimbursements for healthcare items or services in the local currency of eight or more countries; and

- satisfy the remaining portability, access, and renewability requirements that would apply absent enactment of the ACA.

Particularly key for purposes of the ACA's minimum essential coverage requirement is the EHCCA's requirement that expatriate health plan sponsors have a reasonable belief that the benefits provide minimum value coverage requiring the plan to pay at least sixty (60) percent of the total allowed costs.

At a minimum, plan sponsors should secure carrier documentation certifying compliance with these standards. Plans and policies that do not satisfy these minimum requirements will remain subject to uncertain compliance risks—at least until more guidance is released.

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