

FAQS ABOUT AFFORDABLE CARE ACT IMPLEMENTATION (PART XIII)

March 8, 2013

Set out below is an additional Frequently Asked Question (FAQ) regarding implementation of various provisions of the Affordable Care Act. This FAQ has been prepared by the Departments of Labor, Health and Human Services (HHS), and the Treasury (collectively, the Departments). Like previously issued FAQs (available at <http://www.dol.gov/ebsa/healthreform/>), this FAQ answers a question from stakeholders to help people understand the new law and benefit from it, as intended.

Expatriate Health Plans

Q1: To what extent is expatriate group health insurance coverage subject to the provisions of the Affordable Care Act?

The Departments recognize that expatriate health plans may face special challenges in complying with certain provisions of the Affordable Care Act. In particular, challenges in reconciling and coordinating the multiple regulatory regimes that apply to expatriate health plans might make it impossible or impracticable to comply with all the relevant rules at least in the near term. For example, independent review organizations may not exist abroad, and it may be difficult for certain preventive services to be provided, or even be identified as preventive, when such services are provided outside the United States by clinical providers that use different code sets and medical terminology to identify services. Further, expatriate issuers may face challenges and delays in communicating with enrollees living abroad, and, due to the complex nature of these plans, standardized benefits disclosures can be difficult for issuers to produce. Expatriate health plans may require additional regulatory approvals from foreign governments, and, in some circumstances, it is possible that domestic and foreign law requirements conflict.

While the Departments gather further information and analyze these challenges to determine what actions may be appropriate regarding the current requirements under the Affordable Care Act, the Departments have determined that, for plans with plan years ending on or before December 31, 2015, with respect to expatriate health plans, the Departments will consider the requirements of subtitles A and C of Title I of the Affordable Care Act satisfied if the plan and issuer comply with the pre-Affordable Care Act version of Title XXVII of the Public Health Service Act.

References to subtitles A and C of Title I of the Affordable Care Act also include the corresponding provisions imported into section 715 of the Employee Retirement Income Security Act (ERISA) and section 9815 of the Internal Revenue Code.

For purposes of this temporary transitional relief, an expatriate health plan is an insured group health plan with respect to which enrollment is limited to primary insureds who reside outside of their home country for at least six months of the plan year and any covered dependents, and its associated group health insurance coverage.

This definition is also the definition of “expatriate health coverage” under 45 CFR 153.400(a)(1)(iii) during this temporary transitional period (that is, for plans with plan years ending on or before December 31, 2015).

Expatriate health plans must, as a condition of this transitional relief, comply with the pre-Affordable Care Act version of Title XXVII of the PHS Act and other applicable law under ERISA and the Internal Revenue Code, including, for example, the mental health parity provisions, the HIPAA nondiscrimination provisions, the ERISA section 503 requirements for claims procedures, and any reporting and disclosure obligations under ERISA Part 1.

The Departments note that coverage provided under an expatriate group health plan is a form of minimum essential coverage under section 5000A of the Internal Revenue Code.

The Departments request comments on and information about the unique challenges that expatriate health plans may face in complying with provisions of the Affordable Care Act, including information about which particular types of plans face these challenges and with respect to which particular provisions of the Affordable Care Act. Please send comments by May 8, 2013 to e.ohpsca-expat.ebsa@dol.gov.