

New Law "Cures" Small Employer Health Insurance Dilemma

The 21st Century Cure Act has passed Congress which the President has just approved and signed. The legislation provides for an exception from group health plan requirements for qualified small employer health reimbursement arrangements. Beginning in 2017, a small employer may again reimburse employees for individual health insurance premiums without fear of the onerous \$100 per day per employee penalty assessed for violation of health care reform.

Plan requirements. To qualify as "a qualified small employer health reimbursement arrangement," the plan must meet certain requirements.

1. The plan must be provided on the same terms to all employees. Some employees may be excluded from the plan:
 - employees who have not completed 90 days of service,
 - employees who have not attained age 25,
 - part-time (less than 30 hours a week) or seasonal employees,
 - employees subject to collective bargaining.
2. The plan must be funded solely by the employer and no salary reduction contributions may be made under the arrangement.
3. The plan must provide, after the employee provides proof of minimum essential coverage, for the payment of, or the reimbursement of, medical expenses (as defined in §213(d)) of an eligible employee or the employee's eligible family members.
4. The plan must provide that payments and reimbursements for any year be no more than \$4,950 for an eligible employee and \$10,000 if the arrangement provides payment or reimbursement for family members.
 - In the case of an individual who is not covered for the entire year, the limitations are prorated. For example, an employee who is covered for nine months of the plan year may have payments and reimbursements of no more than \$3,712.50 (9/12 of \$4,950).

Small employer. An eligible employer is one that is not an applicable large employer under §4980H(c)(2). Thus, the employer may offer a qualified small employer health reimbursement arrangement if it has less than 50 full-time and full-time equivalent employees. An eligible employer may not offer a group health plan to any of its employees.

Tax-free fringe benefit. A qualified small employer health reimbursement arrangement payment or reimbursement is not excluded from gross income if, for the month in which such medical care is provided, the individual does not have minimum essential health coverage.

Premium tax credit. For an employee who is provided a qualified small employer health reimbursement arrangement for any coverage month, the premium tax credit for that month will be reduced.

Other rules.

- The eligible employee must receive proper and timely notice of the plan availability (see §9831(d)(4)(A) for details).
- The total amount of the permitted benefit must be reported on the employee's Form W-2.
- The transition relief provided in Notice 2015-17 is extended for any plan year beginning on or before Dec. 31, 2016.