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Healthcare Subsidies for Grad Students: An ACA Conundrum

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Colleges and universities historically have provided graduate student employees (*e.g.,* teaching assistants) with a stipend or reimbursement to help defray (or even fully cover) the cost of their medical coverage under the student health plan. Competing guidance from the Departments of Health and Human Services ("HHS"), Labor ("DOL"), and the Treasury (collectively, the "Departments") under the Affordable Care Act ("ACA") will soon make such arrangements problematic.

Four years ago, HHS released regulations clarifying that student health insurance is a form of individual market coverage (rather than a group health plan). This was meant, in part, to ensure that students enrolled in these plans benefit from consumer protections applicable to individual market coverage under the ACA. About a year later, the Departments issued guidance that effectively prohibits employers from using a health reimbursement arrangement (an "HRA") to reimburse employees for individual market coverage. The goal there was to prevent employers from incentivizing employees to opt for public exchange coverage over an employer group health plan. The result? Any school that provides a stipend to student employees enrolled in a student plan is considered to be using an HRA to reimburse individual market coverage, and could be subject to penalties.

Such penalties are severe. This type of HRA would be considered its own group health plan, and thus would be subject to the ACA's market reforms, which include, among other things, prohibitions on annual and lifetime limits and on cost-sharing for preventive services (each of which this type of HRA would inherently fail to satisfy). Such a failure can result in a penalty of up to *$100 per day per employee* under Internal Revenue Code §4980D.

While none of the above-described guidance was likely intended to keep schools from being able to offer these healthcare stipends to their graduate student employees (a point which an IRS representative informally confirmed to Jackson Lewis shortly after this clash in the guidance came to the attention of practitioners), the Departments appear to have doubled down on their position with the release of Notice 2016-17 and corresponding guidance from the DOL and HHS. This most recent guidance states that schools must re-structure their graduate student benefits and provides a period of transition relief by indicating that no penalties will apply for plan years beginning prior to January 1, 2017.

On whether there has been any talk of extending or making permanent the transition relief, given the unintended consequences of the prior guidance to graduate student subsidies, an IRS representative indicated to Jackson Lewis that the IRS was not aware of any such talks, but pointed out that the problem is a "three agency question" and that another Department could propose a permanent fix.

In the meantime, schools continue to wrestle with the issue. Solutions under consideration include allowing graduate student employees to participate in the school's employee group health plan (under the ACA, an employer may provide a stipend/reimbursement through an HRA that is integrated with the employee group health plan) or offering a cash bonus that, at the student's discretion, can be put toward the cost of healthcare.

Please contact Jackson Lewis if you have any questions.

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