July 2013

Treasury Releases Guidance on Individual Mandate Transitional Relief and Eligibility for Premium Tax Credits

The Internal Revenue Service continues to refine past guidance relating to healthcare reform. Most recently, IRS Notices 2013-41 and 2013-42 relating to individual taxpayers and premium tax credit eligibility were released to address the individual mandate, open questions about specific circumstances relating to multiple government program eligibility and eligibility for the premium tax credit. The contents of both Notices are discussed below.

Notice 2013-42: Individuals Eligible for Employer Coverage Administered under a Non-Calendar Year Plan

The individual insurance mandate becomes effective January 1, 2014, which requires individuals to maintain health coverage that is considered minimum essential coverage ("MEC") or face a penalty. However, satisfying the requirement on the January 1, 2014 effective date may be difficult or not possible for many employees, because their eligible employment-based group health coverage is administered on a non-calendar year basis. Due to limitations on when employees are permitted to enroll in these plans, employees would effectively be required to enroll for coverage months before they are required to have coverage in place; in other words, enroll in coverage before the effective date of the individual insurance mandate. In some cases, employees may have missed their opportunity to enroll until the next plan year beginning sometime during 2014 – after the effective date of the individual insurance mandate.

The IRS is providing transition relief as to the individual mandate penalty during part of calendar year 2014 for certain employees (and their dependents). The relief applies to employees (and their dependents) entitled to enroll in a non-calendar year eligible employer-sponsored plan with a plan year beginning in 2013 and ending in 2014 (the 2013-2014 plan year). The transition relief begins January 2014 and continues through the month in which the 2013-2014 plan year ends.

In addition, any month in 2014 for which an individual is eligible for the transition relief will not be counted towards the short coverage gap exemption available under the penalty rules. The short coverage gap is a continuous period of less than 3 months.

<u>*Examples*</u>

Example 1. Eligible for Enrollment in a Non-Calendar Year Plan for the 2013- 2014 Plan Year.

Bob is unmarried and has a 5-year-old daughter, Dorothy. Bob and Dorothy are eligible to enroll in a non-calendar year eligible employer-sponsored plan offered by Bob's employer, Acme Co., whose plan year begins on August 1, 2013 and ends on July 31, 2014. Neither Bob nor Dorothy enrolls in Acme's employer-sponsored plan for the 2013-2014 plan year. Both Bob and Dorothy are eligible for the transition relief provided in this notice for January 2014 through July 2014.

Example 2. Married Individuals each Eligible for Enrollment in a Non-Calendar Year Plan of an Employer for the 2013-2014 Plan Year and in a Calendar Year Plan of the Other Spouse's

Employer for 2014.

Frank and Gina are married. Frank and Gina are eligible to enroll in a non-calendar year eligible employer-sponsored plan offered by Frank's employer, Ybor Management, whose plan year begins on August 1, 2013 and ends on July 31, 2014. Neither Frank nor Gina enrolls in Ybor's employer-sponsored plan for the 2013-2014 plan year. In addition, Frank and Gina are entitled to enroll in a calendar year eligible employer-sponsored plan offered by G's employer, Zed Medical, beginning on January 1, 2014. Neither Frank nor Gina enrolls in Zed Medical's employer-sponsored plan for the 2014 plan year. Both Frank and Gina are eligible for the transition relief provided in this notice for January 2014 through July 2014.

Notice 2013-41: Determination of Minimum Essential Coverage, Coverage Effective Dates, Premium Tax Credit Eligibility and Application of the Individual Mandate Penalty

Minimum Essential Coverage Determination

Although the Employer Shared Responsibility requirements under healthcare reform have been delayed for one year, other important provisions of the law will become effective beginning in 2014. A significant provision, the premium tax credit for certain low income individuals is one such provision. Under the rules, eligible low income individuals purchasing coverage under a qualified health plan through an Exchange are allowed a premium tax credit to assist with the purchase of coverage. However, individuals otherwise eligible (and their dependents) are only entitled to a premium tax credit if they are <u>not eligible</u> for other MEC. Under the rules, certain government-sponsored programs are considered MEC. In addition to these programs, the Department of Health & Human Services ("HHS") is permitted to designate other sources of health coverage or programs as MEC.

Consistent with this authority, HHS determined for 2014 (plan or policy years beginning before January 1, 2015) state high risk pools and self-funded health coverage offered to students by universities are considered MEC <u>without</u> making the required submission to HHS. Beginning with 2015 plan or policy years, any state high-risk pool or self-insured student health insurance plan must meet certain requirements and submit an application to HHS requesting recognition as MEC.

Notice 2013-41: Determinations of When Individuals are Deemed 'Eligible' under Certain Programs for Purposes of Eligibility for the Premium Tax Credit

CHIP – Failure to Pay Premiums

Individuals losing CHIP coverage due to their failure to pay the required premiums will still be considered "eligible" for CHIP coverage for a certain period of time and will not be eligible for a qualified health plan subsidized by a premium tax credit through one of the Health Insurance Exchanges ("Exchange"). This is consistent with the rules relating to individuals eligible for affordable MEC through an employer plan but fail to enroll or lose coverage for non-payment of premiums. During this period of eligibility, the individual (and any dependents) would not be entitled to the premium tax credit and would not result in a penalty being assessed against an employer sponsored program.

CHIP – Waiting Period

Individuals subject to a pre-enrollment waiting period under a CHIP program are treated the same as employees subject to a permissible waiting period under an employer health plan. For purposes of the premium tax credit, they are not considered "eligible" for MEC until the date coverage is effective and are not prevented from applying for coverage through an Exchange with a premium tax credit.

Eligibility Dates for Certain Government Sponsored Programs – Agency Determinations

In many cases it is difficult to determine if an individual is eligible for Medicare or Medicaid because the criterion for eligibility is not easily determined. To clarify the eligibility date for purposes of the premium tax credit, an individual is eligible for <u>MEC under Medicaid or Medicare upon a favorable determination of eligibility</u> by the responsible agency in the circumstances described below:

1. Medicaid coverage requiring a finding of disability or blindness.
2. Medicare coverage based solely on a finding of disability or illness.

Eligibility Dates for Certain Government Sponsored Programs – Enrollment Eligibility Determinations

Individuals <u>eligible</u> for certain governmental programs are generally not eligible for the premium tax credits. However, in many cases coverage under the program is at a high cost to the individual. Further, the individual would be required to forgo subsidized qualified health plan coverage. For example, individuals not otherwise eligible for Medicare Part A must pay a substantial monthly premium (for 2013 the monthly Medicare Part A premium is $441). An individual is eligible under the following programs for purposes of a premium tax credit only if the individual is enrolled in the coverage:

1. <u>Medicare Part A coverage requiring payment of premiums</u>.
   Coverage offered under Medicare for which the individual must pay a premium for Medicare Part A coverage.
2. <u>State high risk pools</u>.
   Health coverage offered by a state under a qualified high risk pool to the extent the program is covered by a designation by HHS as MEC.
3. <u>Student health plans</u>.
   Self-funded health coverage offered by a college or university to its students, to the extent the plan is covered by a designation by HHS as MEC.
4. <u>TRICARE programs</u>.
   Coverage under the following TRICARE programs:
   - (a) The Continued Health Care Benefit Program;
   - (b) Retired Reserve;
   - (c) Young Adult; and
   - (d) Reserve Select.

Gallagher Benefit Services, through its compliance experts and consultants, will continue to monitor developments on healthcare reform legislation and regulation and will provide you with relevant updated information as it becomes available. In the interim, please contact your Gallagher Benefit Services Representative with any questions that you may have.