From: Wiggins, Kevin A.
To: EBSA, E-OHPSCA - EBSA
Subject: RE: RIN 1210-AB41 - Supplemental Comments on Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 under the Patient Protection and Affordable Care Act
Date: Wednesday, June 09, 2010 9:13:57 AM

Ladies and Gentlemen:

I am submitting these comments on my personal behalf and not on behalf of any other person or entity. These comments supplement my comments dated June 9, 2010. In those comments I requested clarification on the extent to which a group health plan could condition dependent eligibility based on the time an individual becomes a child of a participant. It has since occurred to me that guidance that addresses other business considerations could also be helpful. Other business considerations could include geographic differences, employee classifications, dispute settlements, and similar factors. One overarching question is whether or to what extent PHS Section 2714 (as defined in my June 9, 2010 comments) requires an "all or none" concept, such that if an employer offers dependent coverage to one child of any participant (or employee), that employer must offer coverage to all children of all participants (or employees).

Thus, for example, it would be helpful if the regulations were to address to what extent an employer could offer dependent coverage in one geographic location but exclude children from coverage in another geographic location.

Does the identify of what constitutes a "plan" factor into the analysis? Could an employer adopt two plans, one that covers children and a separate plan that does not cover children? Could an employer adopt separate plans based on bona fide employee classifications, such as collectively bargained employees, full time vs. part time, seasonal employees, current employees vs. former employees, employees in different geographic locations, or similar business considerations?

Does the analysis require a review of whether the plan or plans satisfy the nondiscrimination requirements of Internal Revenue Code Section 105(h)? In that regard, does it matter whether the plan is self-insured or fully insured? Could an employer adopt a discriminatory self-insured plan that covers only one highly compensated employee and his or her children (e.g., via a settlement agreement over an alleged wrongful termination), and merely report the benefits as taxable, or would PHS Section 2714 require an employer who enters into such an arrangement to offer dependent coverage to all children of all employees (or all participants in the employer's group health plan)? Is a fully-insured plan required to cover dependents on a non-discriminatory basis (assuming the plan otherwise covers dependents)?

Thank you for your time and attention to these matters.

Kevin Wiggins

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