National Business Group on Health®

20 F Street, NW, Suite 200
Washington, D.C. 20001
202.558.3000 • Fax 202.628.9244
www.businessgrouphealth.org

Creative Health Benefits Solutions for Today, Strong Policy for Tomorrow

August 9, 2016

Submitted electronically via: www.regulatins.gov

CC:PA:LPD:PR (REG-135702-15)
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington DC 20044

Re: Expatriate Health Plans and Other Issues

Dear Sir or Madam:

The National Business Group on Health is pleased to respond to the Department of Labor's, the Department of Health and Human Services,' and the Department of the Treasury's (collectively, the Departments') proposed regulations implementing the Expatriate Health Coverage Clarification Act of 2014 (EHCCA) and proposing standards for other benefits.

The National Business Group on Health represents 423 primarily large employers, including 72 of the Fortune 100, who voluntarily provide group health plan coverage and other health programs, including wellness programs, to over 55 million American employees, retirees, and their families. Our members employ and provide health coverage for a global workforce under a wide variety of arrangements, including full-time, part-time, domestic, expatriate, and inpatriate (i.e., non-US citizens working in the United States temporarily). They also often have multiple lines of business in multiple countries and tailor employee work and benefit arrangements to the specific needs of each line of business.

As our members prepare for implementation of the various Code requirements under the Affordable Care Act (ACA), primary concerns will be:

(1) Minimizing the administrative and cost burdens associated with those requirements and

(2) Having flexibility to provide comprehensive health coverage in the most efficient, cost-effective way possible.

Having flexibility to adapt their regulatory compliance to current and future work, benefit, and payroll arrangements will reduce compliance burdens and allow plan sponsors to devote more resources to maintaining high-quality, cost-effective health coverage for employees and their dependents. Therefore, we welcome the Departments' efforts to clarify employers' ACA compliance obligations and generally support the Departments' proposals regarding:

- The definitions of "expatriate health insurance issuer," "expatriate health plan," "expatriate health plan administrator," and "qualified expatriate";

- The exclusion of expatriate health plans from the PCORTF fee;

- The exemption of all expatriate health plans from the requirement to make reinsurance contributions; and

- Electronic delivery of statements required under Code sections 6055 and 6056.

I. Special Features of Expatriate and Inpatriate Health Coverage

However, we encourage the Departments, in developing final EHCCA and other guidance, to take into account multinational employers' special challenges in complying with the Affordable Care Act and other requirements. As noted above, National Business Group on Health members employ and provide health benefits for employees in a wide variety of industries, locations, and work arrangements. To ensure the efficient, cost-effective plan administration, it is critical that plan sponsors be able to adapt their Affordable Care Act and other compliance procedures to current plan structures. Therefore, we recommend that the Departments take into account the following:

- Many of our members offer expatriate (and domestic) health coverage through self-insured plans or a combination of self-insured and insured arrangements.

- Because of expatriate health plans' special challenges—such as those related to complying with domestic and foreign laws and health care infrastructures—our members may offer health coverage through US-based and non-US based group health plans and health insurance issuers.

- In some cases, expatriate or inpatriate employees maintain health coverage through foreign governments. Such coverage generally is at least as comprehensive as coverage available in the US.

- Our members often devote substantial financial, administrative, and staff resources to ensure that health coverage available to expatriate (and inpatriate) employees is equivalent to coverage available to domestic employees. Providing equivalent coverage often requires more financial and administrative resources for expatriates than for domestic employees. In addition, in some cases, coverage available to expatriate employees is more generous than that available for domestic employees, often because these employees may receive (sometimes overlapping) health coverage from sources in other countries that comply with stringent requirements under foreign law.

- To ensure that expatriate (and inpatriate) employees have comprehensive health coverage, our members' employees may have more than one source of employer-sponsored health coverage (i.e., overlapping coverage based in different countries)—particularly if employees are in different countries for periods of less than one year.

- Plan sponsors need to reconcile and coordinate multiple regulatory regimes that apply to expatriate health coverage.

- Plan sponsors often have difficulty predicting one-time (or occasional) short gaps in coverage for expatriate and inpatriate employees and their dependents as they move from one country to another, sometimes on short notice.

- Plan sponsors often have difficulty coordinating health coverage when employees work in different countries within a plan year.

- Plan sponsors need to coordinate health coverage with other benefits for expatriates and inpatriates, such as retirement, relocation, and education benefits for dependents.

- Plan sponsors often have difficulty in making certain preventive and other health services available outside the United States.

- Clinical providers in different countries often use different code sets and medical terminology to identify services.

- Plan sponsors must take into account challenges and delays in communicating with participants living abroad and providing standardized benefits disclosures.

- In adopting certain plan designs, plan sponsors may need regulatory approvals—and have difficulty obtaining such approvals—from foreign governments.

- Domestic and foreign legal requirements for health coverage often conflict.

Our members make best efforts to maintain high-quality, comprehensive health coverage for expatriate and inpatriate employees (and their dependents) that is comparable to the coverage available to U.S. domestic employees. However, the above challenges will, on occasion, make strict compliance with ACA standards or the Departments' proposed regulations extremely difficult or impossible. For example:

- Given frequent movement of some qualified expatriates between countries, there may be some years when an expatriate health plan's enrollment, as of the first day of the plan year, deviates slightly from the 95% threshold for the "substantially all" enrollment requirement.

- There also may be some years when a category B expatriate—because of frequent or unexpected location changes, for work or personal reasons—may work outside the United States for slightly less than 180 days in a 12-month period but maintain health coverage under the same expatriate health plan.

- To maintain consistent, comprehensive coverage for qualified expatriates, employers may offer certain excepted benefits such as supplemental health insurance coverage, travel insurance, or short-term insurance that deviates slightly

from the requirements set forth in the proposed regulations. For example, supplemental coverage may, on occasion, cover some essential health benefits that overlap with expatriate health plan benefits. There may be times when travel insurance that includes major medical benefits extends for slightly longer than 6 months to ensure that there are no gaps in coverage.

II. Recommendations for Expatriate and Inpatriate Health Coverage

Therefore, National Business Group on Health encourages the Departments, in developing final EHCCA and other regulatory guidance, to:

(1) Allow flexibility for plan sponsors of expatriate health plans, provided they make good faith efforts to comply with their ACA and other regulatory obligations;

(2) Treat health coverage provided by a non-United States health insurance issuer, non-United States self-insured group health plan, or foreign government as minimum essential coverage under Code § 5000A; and

(3) Allow flexibility for plan sponsors to offer excepted benefits tailored to employees' needs, provided plan sponsors offer an overall package of benefits that provides comprehensive health coverage.

We believe that the above approach takes into account the variety of arrangements by which employers provide health coverage for expatriate employees and ensures uniform treatment and compliance obligations for these arrangements.

We also encourage the Departments, in final regulations, to include a more streamlined and comprehensive compliance approach for expatriate health plans. Because expatriate health coverage often consists of many components and multiple issuers or third-party administrators, we believe a more pragmatic approach would be to consider the entire benefit package available to a qualified expatriate—including medical, pharmacy, excepted benefits, and any other insured or self-insured components—to be in compliance with the ACA and EHCCA, provided the plan sponsor represents (or reasonably relies on a third party representation) that the benefit package satisfies the ACA's minimum essential coverage and minimum value standards for the plan year at issue.

III. Effective Date

Finally, we recommend that in setting an effective date for final regulations, the Departments consider the administrative requirements of large, self-insured group health plans. Most of our members implement plan design changes on a plan year basis, which may or may not coincide with the calendar year. In addition, because our members' plans (1) cover large populations across multiple countries, (2) often include different plan options and designs tailored to specific participant populations, and (3) often require coordination with multiple third-party administrators and vendors, our members tend to finalize any plan design changes up to a year before their implementation. Therefore, we

recommend that final regulations become effective no earlier than the first day of the first plan year beginning 12 months after the issuance of final regulations.

We believe that these recommendations, if implemented, will reduce administrative and cost burdens and allow sponsors of expatriate health plans much-needed flexibility in complying with the Affordable Care Act.

Again, thank you for considering our comments and recommendations on the EHCCA. Please contact me or Steven Wojcik, the National Business Group on Health's Vice President of Public Policy, at (202) 558-3012 if you would like to discuss our comments in more detail.

Sincerely,

Brian J. Marcotte
President and CEO