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Early Renewals Offered to Small Employers

To help mitigate the impact of the Affordable Care Act (ACA) on health insurance premiums, some health insurance issuers in the small group market have been encouraging small employers to renew their coverage early for 2014. The early renewal option offers small employers the option to renew their coverage in late 2013 instead of waiting to renew until their 2014 policy anniversary dates.

This Legislative Brief describes the options offered by certain issuers and outlines legal concerns that employers should keep in mind when considering these options.

EARLY RENEWALS AND ACA REFORMS

As with past renewals, small employers that renew early will likely see a premium increase due in part to rising medical costs. However, according to various issuers, renewing early will allow small employers to postpone additional costs that are due to ACA's premium rating and other reforms.

For example, the following ACA reforms are expected to impact premiums in the small group market:

- ***Premium Rating –*** Effective for plan years beginning on or after Jan. 1, 2014, health insurance issuers in the small group market will be generally prohibited from determining premium rates based on health status, gender or other factors. Issuers will be able to vary premium rates based only on age, rating area, family coverage and tobacco use. This reform, which is often referred to as "community rating," does not apply to grandfathered plans.

- ***Essential Health Benefits –*** Effective for plan years beginning on or after Jan. 1, 2014, health insurance issuers that offer health coverage in the small group market will be required to provide the essential health benefits package required of plans sold in the ACA Exchanges. This requirement does not apply to grandfathered plans.

- ***Pre-existing Condition Exclusions –*** Group health plans and health insurance issuers may not impose pre-existing condition exclusions on coverage for any enrollees, effective for plan years beginning on or after Jan. 1, 2014.

- ***Cost-sharing Restrictions –*** Effective for plan years beginning on or after Jan. 1, 2014, non-grandfathered plans will be subject to limits on cost-sharing and out-of-pocket costs. Plans in the small group market will need to comply with ACA's out-of-pocket maximum limit and ACA's annual deductible limit.

According to health insurance issuers, by renewing before the end of 2013, small employer plans will not be subject to ACA's reforms, such as the new community rating requirements, until the 2014 renewal.

LEGAL CONCERNS

When considering an early renewal, it is important to keep in mind that the federal agencies in charge of implementing ACA and other employee benefit laws have not addressed whether these early renewals are permissible. **Because federal agencies have not addressed these early renewals, small employers should proceed with caution and consult their benefit advisors if they are considering an early renewal.**

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When an employer renews early, it is essentially changing the health coverage's policy or plan year. The Internal Revenue Service (IRS) has limited plan year changes in the following contexts:

- The IRS's proposed rule on ACA's employer shared responsibility penalty provides that once a plan year is established it can only be changed for a valid business purpose. Large employers (50 or more full-time employees) are prohibited from changing plan years to avoid the employer penalty under the proposed rule.
- The IRS's proposed cafeteria plan regulations provide that employers can only change a cafeteria plan's year based on a valid business purpose. Examples provided by the IRS of changes based on a valid business purpose include switching insurance carriers or experiencing a corporate merger, acquisition or other change in business operations.
- In Notice 2012-40, consistent with the proposed cafeteria plan regulations, the IRS states that a plan year is permitted to be changed only for a valid business purpose. If a principal purpose of changing the plan year of a health flexible spending account (FSA) is to delay the application of ACA's $2,500 limit, the change is not for a valid business purpose.

In these contexts, the IRS has indicated that a plan year change that is not made for a valid business purpose will be disregarded and considered ineffective.

ELT Insurance Services will continue to monitor this issue and will provide updated information as it becomes available.