

Eye On Washington

2011 Budget Agreement Repeals Free Choice Vouchers for Exchange Coverage

On April 15th, President Obama signed into law HR 1473, the “Department of Defense and Full-Year Continuing Appropriations Act of 2011” (the Act), which included several provisions affecting the 2010 Health Care Reform law (also known as the Affordable Care Act or ACA).

Perhaps most notably for employers, the Act eliminated the Free Choice Voucher, which would have required employers who sponsor health plans to offer certain employees a “voucher” if the employer’s health coverage was deemed unaffordable and the employee was awarded subsidized health insurance through an Exchange. Employer coverage would have been considered unaffordable if the employee’s cost of coverage exceeded eight percent of their family income, and family income is not more than 400 percent of the federal poverty level. The “voucher” amount, which the employer would have had to pay to the Exchange, would be equal to the most generous amount the employer would have paid for employee coverage under the employer’s plan.



IMPACT ON THE IRS “SHARED RESPONSIBILITY” ASSESSMENT

The Act’s elimination of the Free Choice Voucher has a limited impact on the “Shared Responsibility” penalty, which is assessed on employers with 50 or more full-time workers that either:

1. do not offer minimum essential health coverage or
2. offer coverage that is not affordable.

The penalty only applies if one or more employees receive federal premium assistance payments.

There was a complex interaction of the Free Choice Voucher and the employer “Shared Responsibility” payments. For employers that offer qualifying health coverage, but coverage

is deemed unaffordable, the IRS “Shared Responsibility” assessment will generally be \$250 per month for each worker that is awarded subsidized health coverage. There are a number of special calculations, exclusions and caps within the calculation. In addition, before the Act was signed into law, amounts due for the Free Choice Voucher would have offset the IRS “Shared Responsibility” Assessment; i.e., the “Shared Responsibility” penalty would not be due if a Free Choice Voucher was paid for a given employee.



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IMPACT ON HEALTH COVERAGE REPORTING

- 1 Prior to the Act, large employers who were subject to the “Shared Responsibility” Payment, as well as small employers that offered coverage deemed unaffordable (i.e., whose employees could have been eligible for the Free Choice Vouchers), were required to provide the IRS with annual reports detailing their health coverage, beginning in 2014 (IRC Section 6056). With the elimination of the Free Choice Vouchers, there was no need to require reporting by these small employers. Consequently, the reporting required under IRC Section 6056 is now only applicable to large employers who are subject to the “Shared Responsibility” Payment.
- 2 The Act also removed a requirement for employers to report “The option for which the employer pays the largest portion of the cost and the percentage of cost paid by the employer in each enrollment category under such option”, since this information was used to determine the amount of the now-eliminated Free Choice Voucher.

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OTHER IMPLICATIONS

Some business organizations were concerned that the Free Choice Voucher program might have provided an incentive for the youngest and healthiest employees to opt out of employer coverage, thereby raising costs for remaining employees. That concern is reduced with the elimination of Free Choice Vouchers.

The elimination of the Free Choice Voucher also highlights an issue with regard to the ability of employees to purchase insurance through an Exchange on a tax-favored basis. Employees who are eligible to receive federal subsidies can forego coverage by their employer and purchase individual insurance on an Exchange, but by doing so they forego any amount the employer may pay for such coverage. In addition, the premiums the employee pays for health insurance will be made on an after-tax basis.

Small employers will be able to purchase insurance through an Exchange, and could set up a cafeteria plan to permit employees to pay health insurance premiums on a pre-tax basis. However, larger employers will not be allowed to purchase insurance through an Exchange, unless a state expressly permits it. (The ACA provided that large employers could not obtain coverage through an Exchange until 2017; however, recent federal guidance permitted states to apply for waivers of that provision.) If permitted, any premium the large employer pays for the employee will be exempt from tax, and the employee’s share of the premium could also be exempt from tax if the employer establishes a cafeteria plan. If large employers are not permitted to purchase health insurance through an Exchange, it is unlikely that Exchange premiums could be funded on a pre-tax basis, although options to accomplish this are being explored.