

IRS Tells Employers Not to Put Workers in Health Insurance Exchanges

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The Internal Revenue Service has ruled that employers are not in compliance with the Affordable Care Act if they simply reimburse employees for buying insurance through one of the exchanges instead of establishing a health insurance plan for employees.

The ruling effectively prevents employers from “dumping” their employees into the new health exchanges rather than providing workers with health coverage, according to [The New York Times](#).

The IRS posted the information in the form of [questions and answers](#) on its Web site this month, asking, “What are the consequences to the employer if the employer does not establish a health insurance plan for its own employees, but reimburses those employees for premiums they pay for health insurance (either through a qualified health plan in the Marketplace or outside the Marketplace)?”

In response, the IRS pointed out that under [IRS Notice 2013-54](#), such arrangements are described as employer payment plans and generally do not include an arrangement under which an employee may have an after-tax amount applied toward health coverage or take that amount in cash compensation. Thus, employers may be subject to penalties of up to \$100 per day per employee if they simply reimburse employees for getting their own health insurance through one of the health care exchanges rather than setting up a health insurance plan for employees.

“As explained in Notice 2013-54, these employer payment plans are considered to be group health plans subject to the market reforms, including the prohibition on annual limits for essential health benefits and the requirement to provide certain preventive care without cost sharing,” said the IRS. “Notice 2013-54 clarifies that such arrangements cannot be integrated with individual policies to satisfy the market reforms. Consequently, such an arrangement fails to satisfy the market reforms and may be subject to a \$100/day excise tax per applicable employee (which is \$36,500 per year, per employee) under section 4980D of the Internal Revenue Code.”

Notice 2013-54 also explains how the Affordable Care Act’s market reforms apply to certain types of group health plans, including health reimbursement arrangements, health flexible spending arrangements and certain other employer health care arrangements, including arrangements under which an employer reimburses an employee for some or all of the premium expenses incurred for an individual health insurance policy, the IRS pointed out.

For further information, the Labor Department has also issued a similar notice, [DOL Technical Release 2013-03](#), the IRS noted, and the Department of Health and Human Services plans to issue guidance soon to reflect Notice 2013-54. On Jan. 24, 2013, the [Labor Department](#) and [HHS](#) issued frequently asked question documents that addressed the application of the Affordable Care Act to health reimbursement arrangements.