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Good News for Affordability and Wellness

As background, the employer penalty regulations provide that coverage under an employer plan is affordable to a particular employee if the employee's "required contribution" to the plan does not exceed 9.5% of the employee's income for the year. However, the regulations are unclear as to what is included in the "required contribution" when it comes to wellness surcharges and penalties.

As an initial matter, because the affordability test looks to the annual premium paid for employee-only coverage, surcharges not related to employee-only coverage are disregarded. For example, a typical spouse/partner surcharge should be excluded from the affordability calculation. Further, a wellness surcharge relating to a spouse or a partner should also be excluded from the affordability calculation. However, this leaves open whether a wellness surcharge related to the employee is considered in determining affordability.

Based on a pre-release of guidance that will be issued on May 3rd, wellness plan surcharges must be included in the premium calculation for affordability, EXCEPT for the following two types of surcharges:

1. Surcharges based on smoking cessation that are part of a wellness plan arrangement (that satisfies the wellness plan rules) can be excluded from the annual premium calculation for purposes of affordability. In other words, the premium that applies to non-tobacco users is used for testing affordability for all employees regardless of tobacco use.
2. For any plan year beginning prior to January 1, 2015 (e.g., the 2014 calendar year), surcharges for any wellness plan arrangement (that satisfies the wellness plan rules) can be excluded from the annual premium calculation for purposes of affordability, but only to the extent of the terms of the wellness arrangement in effect on May 3, 2013. This transition rule applies to both current employees and employees hired after May 3, 2013.

Link to Official Proposed Regulations