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ACA Application to US Territories

Since the passage of the Affordable Care Act, it has always been a mystery as to how the Affordable Care Act applies in the United States Territories. Particularly, in Puerto Rico where many mainland U.S. corporations have operations, and who has its own separate Tax Code. Late last week, the Centers for Medicare & Medicaid Services issued letters to the insurance commissioners of the United States Territories (Puerto Rico, the Virgin Islands, Guam, American Samoa and Northern Mariana Islands). The letters indicated that the ACA requirements for guaranteed availability, community rating, single risk pools, rate reviews, the medical loss ratio and essential health benefits would not apply to the individual and group health insurance markets.

At the same time, the letters make clear that they do not apply to ERISA plans. Specifically, the letters say – "Our analysis applies only to health insurance that is governed by the PHS Act. It does not affect the PHS Act requirements that were enacted in the Affordable Care Act and were incorporated into the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (Code) and apply to group health plans (whether insured or self-insured), because such applicability does not hinge on, or rely upon the term 'state' as it is defined in either the PHS Act or in the Affordable Care Act." In other words, group health plans under ERISA are not affected by the exemption and still must comply with the applicable Affordable Care Act provisions.

For more information see the following website under the title "Health Market Reforms."

http://www.cms.gov/CCIIO/Resources/Letters/index.html