Healthcare FAQ

Over the last several months, the Ohio Township Association has been inundated with questions pertaining to healthcare reimbursements as they relate to the Patient Protection and Affordable Care Act. This is a federal issue rather than a state issue. Please see below for answers to several frequently asked questions. All notices, bulletins and requests mentioned in this article are available on the home page of the OTA website at www.ohiotownships.org.

1 What is the definition of a healthcare reimbursement?

Pursuant to IRS Notice 2015-17, this refers to a “group health plan” under which an employer (the township) reimburses an employee (or elected official) for some or all of the premium expenses incurred for a health insurance policy that they obtain from a source other than the employer (the township).

2 Last year, we were told the township has to tax reimbursements made to elected officials and employees for healthcare premiums paid. Now we are being told reimbursements are not permitted. Is this true?

Yes, this is true. New guidance has been issued by the U.S. Department of Labor and the Internal Revenue Service (IRS) regarding healthcare reimbursements, and both agencies have stated that healthcare reimbursements are not permitted under the Patient Protection and Affordable Care Act (PPACA).

On Nov. 6, 2014, the U.S. Department of Labor issued a document titled “FAQs about Affordable Care Act Implementation (Part XXII).” This document specifically states that should an employer reimburse an employee for healthcare premiums paid, this type of arrangement is not acceptable under the PPACA.

Subsequently, the IRS issued Notice 2015-17 in late February 2015. This notice reiterates that reimbursements are “group health plans” which fail to comply with market reforms that apply to group health plans under the PPACA and that small employers (those with 50 or fewer employees) have until June 30, 2015, to come into compliance with this rule by discontinuing reimbursements.

3 If reimbursements complied with the PPACA last year (2014), why don’t they comply in 2015?

Again, new guidance has been issued relative to this subject matter. In 2013, the Department of Labor and IRS issued guidance and directives on the subject of healthcare reimbursements. The documents stated that healthcare reimbursement plans did not comply with the PPACA, but that it was still permissible to reimburse employees for out-of-pocket costs related to healthcare premiums so long as the employer taxed those reimbursements received by employees (or, in the case of townships, elected officials).

4 I thought townships that had 50 or fewer employees didn’t have to comply with the PPACA, so why can’t we reimburse?

Employers with 50 or fewer employees or 50 full-time equivalents do not have to comply with many of the provisions of the Affordable Care Act. These are known as small employers under the PPACA and most townships fall in this category. The one caveat is that if a small employer offers healthcare, the small employer has to offer healthcare in compliance with the PPACA rules and regulations.

Here is how townships with 50 or fewer employees are impacted. Example: A township only offers healthcare reimbursements to elected officials and one full-time employee for healthcare premiums paid. All five individuals are taking the reimbursements, as they are getting their coverage through a full-time employer (in the case of the elected officials) or their spouse (in the case of the employee).

By offering reimbursements, the township, pursuant to the Affordable Care Act, is offering a “group health plan.” Unfortunately, according to the PPACA, reimbursements for healthcare premiums paid do not comply with the PPACA and so the township must stop offering healthcare reimbursements altogether.

5 The Ohio Revised Code (§505.60 and §505.601) still states that townships may reimburse. Why?

The language in Ohio Revised Code 505.60 and 505.601 does still state that a
towship may reimburse for out-of-pocket healthcare premium costs incurred by township officials and employees. However, these state statutes were enacted long before the PPACA, and federal law on healthcare preempts state law when the two conflict.

6 Can we pass a pay increase for employees and elected officials to cover the cost of the reimbursements?

There are two answers to this question - one for employees and one for elected officials. The short answer for employees is yes. The board of township trustees may increase the salaries or wages of employees. (However, if the employee is in a bargaining unit, a raise cannot be granted without first satisfying a bargaining obligation.)

The short answer for elected officials is no. Salaries of township elected officials are set in statute (R.C. §505.24 - trustees; and §507.09 - fiscal officers). Furthermore, pursuant to Article II §20 of the Ohio Constitution, the Ohio General Assembly is to fix the term of elected officials and determine the compensation for such officials. The provision further states that no current elected official may receive an interim increase in pay.

7 What kind of penalties are we subject to if we continue to reimburse for healthcare premiums past June 30, 2015?

The Affordable Care Act has a $100 a day general “non-compliance” penalty. This penalty applies per person. Townships could owe the IRS $36,500 per year for every employee whose healthcare premiums are reimbursed. However, IRS Notice 2015-17 provides relief from this penalty for small employers for all of 2014 and up until June 30, 2015.

8 What is the OTA doing to change this? What can townships do to help?

This is a federal issue, not a state issue. Legislation must be passed and enacted at the federal level to undo this change and allow for reimbursements in the future. You are encouraged to contact your federal congressional member(s) and express your desire for change. You are also encouraged to contact Ohio’s senators - Rob Portman and Sherrod Brown. The OTA has been in contact with congressional staff about this issue.

The OTA has also been working with the Knox County Prosecutor and the Auditor of State’s office on a potential Attorney General Opinion to further clarify this issue for townships. The request was sent to the Attorney General in mid-March.

The OTA also requested the Auditor of State issue a bulletin to townships (and other local governments) to recap this issue and provide guidance to townships. This document is available on the home page of the OTA website at www.ohiotownships.org.

Finally, watch for additional information in upcoming OTA publications or online. It was reported in IRS Notice 2015-17 the Treasury Department and the IRS anticipate that clarifications regarding other aspects of employer payment plans and HRAs will be provided in the near future.