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EXTENSION OF PERIOD FOR FURNISHING WRITTEN QSEHRA NOTICE TO ELIGIBLE EMPLOYEES

Notice 2017-20

PURPOSE

This notice extends the period for an employer to furnish an initial written notice to its eligible employees regarding a qualified small employer health reimbursement arrangement (QSEHRA) under section 9831(d) of the Internal Revenue Code (Code).

BACKGROUND

A QSEHRA is an arrangement described in section 9831(d), which was added to the Code by the 21st Century Cures Act (Cures Act), Pub. L. 114-255, 130 Stat. 1033, enacted December 13, 2016. Under that section, an eligible employer (generally an employer with fewer than 50 full-time employees, including full-time equivalent employees, that does not offer a group health plan to any of its employees) may provide a QSEHRA to its eligible employees. Under a QSEHRA, after an eligible employee provides proof of coverage, payments or reimbursements may be made to that eligible employee for expenses for medical care (as defined in section 213(d) and including expenses for premiums for individual health insurance policies) incurred by the eligible employee or the eligible employee's family members, provided certain requirements are satisfied. Section 9831(d)(1) provides that a QSEHRA will not be treated as a group health plan.

Section 9831(d)(4) generally requires an eligible employer to furnish a written notice to its eligible employees at least 90 days before the beginning of a year for which the QSEHRA is provided (or, in the case of an employee who is not eligible to participate in the arrangement as of the beginning of such year, the date on which such employee is first so eligible). Section

9831(d)(4)(B) provides that the written notice must include: (i) a statement of the amount that would be the eligible employee's permitted benefit under the arrangement for the year; (ii) a statement that the eligible employee should provide the information described in clause (i) to any health insurance exchange to which the employee applies for advance payment of the premium tax credit; and (iii) a statement that if the eligible employee is not covered under minimum essential coverage for any month, the employee may be liable for an individual shared responsibility payment under section 5000A for that month and reimbursements under the arrangement may be includible in gross income.

Section 6652(o), which was also added to the Code by the Cures Act, imposes a penalty for failing to timely furnish eligible employees with the required written QSEHRA notice. Section 18001(a)(7) of the Cures Act provides that this penalty applies for years beginning after December 31, 2016, and further provides that an eligible employer that provides a QSEHRA to its eligible employees for a year beginning in 2017 will not be treated as failing to timely furnish the initial written notice if the notice is furnished to its eligible employees no later than 90 days after the enactment of the Cures Act. The 90th day after the enactment of the Cures Act is March 13, 2017.

For more information about QSEHRAs, see FAQs About Affordable Care Act Implementation Part 35, Q 3, issued by the Department of Labor, the Department of the Treasury (Treasury), and the Department of Health and Human Services (<https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-35.pdf>).

TRANSITION RELIEF

Treasury and the Internal Revenue Service (IRS) understand that some eligible employers may find it difficult to comply with the written notice requirement absent additional guidance concerning the contents of the notice. Treasury and IRS intend to issue that guidance in the near future. In order to provide eligible employers additional time to furnish the initial required written notice to eligible employees following the issuance of such guidance, an eligible employer that provides a QSEHRA to its eligible employees for a year beginning in 2017 is not required to furnish the initial written notice to those employees until after further guidance has been issued by Treasury and the IRS. That further guidance will specify a deadline for providing the initial written notice that is no earlier than 90 days following the issuance of that guidance.¹ No section 6652(o) penalties will be imposed for failure to provide the initial written notice before the extended deadline specified in that guidance. Employers that furnish the QSEHRA notice to their eligible employees before further guidance is issued may rely upon a reasonable good faith interpretation of the statute to determine the contents of the notice.

DRAFTING INFORMATION

The principal author of this notice is Ronald Rutherford-Triche of the Office of Associate Chief Counsel (Tax Exempt and Government Entities), although other Treasury and IRS officials participated in its development. For further information regarding this notice, contact Mr. Rutherford-Triche at (202) 317-5500 (not a toll-free call).

¹ Consistent with section 18001(a)(7)(F)(iii) of the Cures Act, an application for enrollment under section 1411(b) of the Patient Protection and Affordable Care Act made before April 1, 2017, shall be treated as having met the requirement of section 1411(b)(3)(B) of such Act, if the information described therein is provided not later than 30 days after the date on which the applicant receives the notice described in section 9831(d)(4) of the Code.