

# ACA Proposed Regulations

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## Proposed Regulations Affecting U.S. Expatriate Plans

On June 10, 2016, the U.S. Internal Revenue Service, Employee Benefits Security Administration and Department of Health and Human Services issued proposed regulations under the Affordable Care Act (ACA) relating to expatriate health plans (whether insured or self-insured), travel insurance and certain other excepted benefits, effective for plan years beginning on and after January 1, 2017. The information below will give you a better understanding of the proposed regulations and how they may impact you.

**Summary.** The proposed regulations include amendments relating to the Expatriate Health Coverage Clarification Act of 2014 (EHCCA), which exempts expatriate health plans from many of the ACA's requirements. The proposed rules mainly reflect prior guidance and the requirements of EHCCA. They do not change the existing rules governing international medical plans provided by International Medical Group®, Inc. (IMG®).

**IMG's International Medical Insurance Plans Are Not Affected.** The proposed rules continue the existing rules that insurance regulated by a foreign government (IMG's plans) will also be recognized as minimum essential coverage for each month with respect to an individual who (i) for such month, is physically absent from the United States for at least one day of the month, or who (ii) is physically present in the United States for an entire month if the coverage provides health benefits within the United States while the individual is on expatriate status.

**U.S. Expatriate Health Insurance Issuers and U.S. Expatriate Health Plans Are Affected.** The proposed rules are not applicable to a non-U.S. insurer (IMG's insurance carriers), but instead regulate an "expatriate health insurance issuer" — defined as a U.S. insurer that offers expatriate plans and is licensed to engage in the business of insurance in a state and subject to state law that regulates insurance.

**Details of the Proposed Regulations.** Consistent with EHCCA, the proposed rules govern an expatriate health plan offered to qualified expatriates by a U.S. "health insurance issuer," which satisfies certain requirements. Most notably, substantially all (95%) of the primary enrollees must be qualified expatriates. Other requirements are as follows:

- An expatriate health plan either must be issued by an expatriate health insurance issuer (U.S.-licensed insurer), or be administered by an expatriate health insurance administrator (as defined in the regulations) if the plan is self-insured.
- If the individual is not a U.S. national and resides in his country of citizenship, that person is not a primary enrollee.
- "Substantially all" means 95%, determined on the first day of the plan year.
- Qualified expatriates include:
  - Those assigned in the U.S.: An individual (who is not a U.S. national) transferred or assigned by the employer to the U.S. for a specific and temporary purpose due to his skills or job duties and who needs access to health coverage in multiple countries (that is, he must be expected to travel outside the U.S. during the temporary assignment), and is offered other multinational benefits on a periodic basis, such as tax equalization,

- compensation for cross-border moving expenses, or compensation to return to the individual's home country (this cannot be a one-time de minimis benefit).
- Those assigned outside of the U.S.: An individual who works outside of the U.S. for at least 180 days in a consecutive 12-month period that overlaps with a single plan year or across two consecutive plan years.

**Highlights Regarding Plan Requirements.** The plan must cover certain types of services, including inpatient hospital, outpatient facility services, physician services and emergency services in certain identified countries. Other requirements are as follows:

- The plan sponsor must reasonably believe it satisfies the minimum value requirements.
- If dependents are covered, coverage must continue until the child is age 26.
- The plan must reimburse services in the local currency in eight or more countries.
- It must comply with the pre-ACA requirements, such as reducing pre-existing condition exclusions by creditable coverage.

Consistent with EHCCA, the market reform provisions of ACA do not apply to expatriate health plans. These include the 90-day waiting period requirement, no cost-sharing for preventive care, the patient protections relating to emergency care, coverage for clinical trials, etc. The Patient-Centered Outcomes Research (PCORI) fees do not apply to expatriate health plans.

**Travel Insurance Is Not Health Insurance Under ACA.** IMG's U.S.-based travel insurance plans that offer coverage for trip cancellation or interruption, lost luggage and other travel insurance benefits are not affected by the proposed regulations.

The proposed regulations make it clear that "travel insurance" is not "health insurance" under the ACA. The proposed rules define the term "travel insurance" as insurance coverage for personal risks incident to planned travel, which may include, but is not limited to, interruption or cancellation of a trip or event, loss of baggage or personal effects, damages to accommodations or rental vehicles, and sickness, accident, disability, or death occurring during travel, provided that the health benefits are not offered on a stand-alone basis and are incidental to other coverage.

The definition of travel insurance also does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting six months or longer, including, for example, those working overseas as an expatriate or military personnel being deployed.

**Short-term, Limited Duration Insurance Reduced to Three Months.** Short-term, limited duration insurance is excepted coverage only if it is for a period of less than three months (not 12 as is currently the rule), including the period during which the individual can renew the policy.

*Comments to the proposed regulations are due August 9, 2016.*

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