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On December 16, 2014, as part of the Consolidated and Further Continuing Appropriations Act, 2015, President Obama signed into law amendments to the Affordable Care Act (“ACA”) that largely exempt expatriate plans from most ACA compliance requirements. While federal regulators had allowed expatriate plans certain transition relief on an ad-hoc basis for various ACA requirements, the regulatory approach was piecemeal and temporary, while leaving many compliance issues unresolved. The new legislation significantly clarifies the ACA requirements applicable to expatriate plans. While it is too soon to expect regulatory guidance, the legislation is surprisingly detailed and is the first significant legislative change to the ACA since the law was passed in 2010.

The new provisions are applicable to expatriate health plans issued or renewed after July 1, 2015, except for the health insurance fee, as noted below.

Expatriate plans are defined as self-funded and fully insured plans that offer coverage to qualified expatriates and their dependents. Qualified expatriates are: (1) certain foreign employees transferred or assigned to the U.S. for a specific and temporary employment purpose or assignment, (2)

individuals working outside the U.S. for at least 180 days in a 12-month period, and (3) individuals who are members of certain groups, such as students or religious missionaries.

The new law:

- Exempts fully insured and self-funded expatriate health plans from most of the ACA’s market reforms (though not the adult dependent/age 26 requirement).
- Deems expatriate health plans to be “minimum essential coverage” for expatriate employees and their dependents, regardless of where they are located in the world.
- Deems expatriate health plans to be “minimum essential coverage under an eligible employer-sponsored plan” for purposes of the employer mandate with respect to certain foreign employees working in the U.S. and certain U.S. expatriates working abroad, but does not exempt employers that provide or purchase these plans from other employer mandate requirements including reporting responsibilities.

- Exempts expatriate plans from the health insurance fee (after 2015) (transition rules for 2014 and 2015), the transitional reinsurance program fee, and the PCORI fee.
- Exempts employer-sponsored coverage of most categories of expatriates from the excise tax on high cost employer-sponsored health coverage.
- Exempts expatriate health plans from a change in the definition of a “small group,” which could have prevented the sale of expatriate coverage to employers with 50 to 99 lives.
- Exempts insurers of expatriate health plans and expatriate health plans from the so-called “administrative simplification” requirements, including SBC requirements.

Plan sponsors of expatriate plans should review their plan design carefully to ensure they are in compliance with certain provisions of the ACA still applicable to such plans, including employer shared responsibility and its associated reporting/disclosure rules, certain fees and adult-child age 26 mandates.

