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March 15, 2019

Re: MEC, MEC Plus and MEC Plus Advantage

Dear Broker Partner:

Our firm was asked by Apex Management Group to review the MEC, MEC Plus and MEC Plus Advantage Healthcare plans to determine whether the “Plans”, if offered by an Applicable Large Employer, meaning an employer with 50 or more Full Time Equivalent Employees (an “ALE”), would qualify as providing Minimum Essential Coverage (“MEC”) as defined by the Patient Protection and Affordable Care Act (the “ACA”) so that the ALE could avoid the “A Penalty” set forth in Section 4980H(a) of the Internal Revenue Code. We were also asked to comment on the applicability of the “B Penalty”, set forth in Section 4980H(b) of the Internal Revenue Code, to the Plans.

After review of the MEC, MEC Plus and the MEC Plus Advantage Healthcare Plans, we can confirm that the Plans provide the Minimum Essential Coverage required by the ACA so that if the ALE offers any of these Plans to at least 95% of its fulltime or fulltime equivalent employees, in any given calendar month, the ALE **WOULD NOT** be subject to the “A Penalty”. (For 2019, the A Penalty is \$208.33 a month, or \$2,500.00 annualized, multiplied by each fulltime employee, after subtracting the first 30 employees.) The “A Penalty” can be avoided under this circumstance even though the Minimum Essential Coverage offered by these plans themselves do not provide “minimum value coverage” or are not be determined to be “affordable” to the employee under the ACA.

After review, and as to the “B Penalty”, our opinion is that the plans **DO NOT** protect the ALE from the “B Penalty” set forth in Section 4980H(d) of the Internal Revenue Code. (For 2019, the B Penalty is \$312.50 a month or \$3,750.00 annualized for each fulltime employee who purchases insurance on the exchange and receives subsidy). This excise tax, if applicable, is not deductible.

Finally, if an eligible employee actually elects an Apex MEC, MEC Plus or the MEC Plus Advantage Plan the group plan offered by the employer, the employee can no longer go to the marketplace exchange for health insurance coverage **and** get a subsidy. If the employee does not accept the employer offered group MEC plan, however, and does enroll in health insurance coverage through the marketplace exchange, and if the MEC plan does not meet either the “affordability” or the “minimum value coverage” tests of the ACA, then the employee could get the subsidy and the employer would be subject to the “B Penalty” for that employee.

JONES, SKELTON & HOCHULI, P.L.C.

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The opinions in this letter are provided as of the date of this letter, such that if the law or cases interpreting the law change after the writing of this letter, our opinions could change. Additionally, this letter was written specifically for our client Apex Management Group, consequently we are not your legal counsel. You should have the Plans reviewed by your own legal counsel in order to reach an independent conclusion about compliance with the ACA and the impact on any potential excise tax penalties.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Hensley", with a stylized flourish underneath.

Michael E. Hensley
For the Firm

MEH/gmc