



Veterans with TRICARE; VA Coverage Won't Count Toward Applicable Large Employer Status

The [Surface Transportation and Veterans Health Care Choice Improvement Act](#) (STVHCC) of 2015 was signed into law by President Obama on July 31, 2015. The Act, also known as H.R. 3236, is focused on surface transportation programs but affects rules regarding how to count employees under the Patient Protection and Affordable Care Act (ACA) as well as health savings account (HSA) eligibility for individuals receiving care through the Veterans Administration.

Applicable Large Employer Counting

The ACA requires applicable large employers (ALEs) to offer their full-time employees health coverage or pay one of two employer-shared responsibility/play-or-pay penalties. ALEs are employers with 50 or more full time employees or full-time equivalent employees. The STVHCC would allow employers (effective for months beginning after December 31, 2013), solely for purposes of determining ALE status, to disregard in any month an employee that has medical coverage for that month through TRICARE or under a federal health care program through the Department of Veterans Affairs.

According to the IRS' ["Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act"](#) Q&A 36, employees who have coverage under TRICARE or a VA health program are not taken into account when determining if an employer is an ALE. However, if the employer had at least 50 full-time employees (including full-time equivalent employees) in the preceding calendar year even after excluding employees that had coverage under TRICARE or a VA health program, the employer is subject to the employer shared responsibility provisions and all full-time employees (including those covered by TRICARE or a VA health program) are taken into account for purposes of determining and computing liability for an employer shared responsibility payment, if any.

Employers who offer health coverage, regardless of their size, should offer health coverage to all eligible employees who have TRICARE or health coverage through the Department of Veterans Affairs. The STVHCC only affects the way an employer counts employees for determining ALE status under the ACA.

UBA ACA Advisor

HSA Eligibility

In order to establish an HSA, an individual must be eligible to do so. Generally, HSA eligibility requires an individual to have a high deductible health plan (HDHP) and prohibits them from having any other coverage for any benefit already covered by the HDHP. This includes TRICARE and previously included Veterans medical benefits (during any month that the individual received VA medical benefits).

The STVHCC provides that individuals who receive hospital care or medical services under any law administered by the Secretary of Veterans Affairs for service-connected disability are still HSA-eligible for any months after December 31, 2015. For further guidance, see Q&A 20 from [IRS Notice 2015-87](#).

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