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HEALTHCARE REFORM UPDATE 2015-23



WHAT EMPLOYERS NEED TO KNOW RIGHT NOW ABOUT HEALTH CARE REFORM

IRS Proposes Minimum Value Rule Change to Mesh IRS and HHS Rules

Beginning in 2015, under the Patient Protection and Affordable Care Act (ACA), large employers must offer affordable, minimum value coverage to their full-time employees or potentially pay a penalty. Some companies have or had been marketing a plan that they state satisfies the minimum value requirement (an actuarial value of 60 percent), based upon a calculator provided by the Department of Health and Human Services (HHS), even though the plan does not cover inpatient hospital charges. New information provided by the IRS and HHS in 2014 and recently in 2015 should be considered as employers review their benefit offerings.

Practical Impact

Employers that are subject to play or pay requirements of providing minimum essential and affordable, minimum value coverage should ensure that the plans they are offering provide substantial coverage of inpatient hospitalization and physician services. If they do not, their employees will be eligible for a premium tax credit to subsidize the cost of health insurance.

An employee who was offered an employer plan that was minimum essential, affordable coverage, and offered (in addition to meeting actuarial value standards) substantial inpatient and physician services, would not be eligible for the premium tax credit if the acceptable employer coverage began on or after November 3, 2014.

Employers who offer affordable, minimum essential coverage that meets actuarial value but does not offer substantial inpatient and physician services will be subject to the play or pay penalty for plan years beginning on or after March 1, 2015, unless they meet the exception requirements relating to the inpatient and physician services.

2014 Changes

In 2014, HHS and the IRS issued [Notice 2014-69](#), stating that plans that do not provide substantial coverage for physician and inpatient hospital services will not be considered minimum value plans, and that the result obtained through the HHS calculator should not be considered valid since that calculator was built on the assumption that a traditional plan design would be used.

The agencies recognized that some employers had already implemented these plans based on the calculator results, and provided a limited exception available to those employers. To be able to use the exception:

1. The employer must have had a binding written commitment (such as a signed agreement) in place before November 4, 2014, to adopt this type of a plan, or it must have begun to enroll employees in this type of a plan before that date.
2. The plan must have a plan year (generally, an effective date) that begins on or before March 1, 2015.
3. The employer must not state or imply in any employee communications that availability of the plan that does not provide coverage for inpatient hospital stays or physician services will prevent the employee from receiving a premium tax credit, and it must correct any previous communications to that effect (note that this may mean that a Summary of Benefits and Coverage may need to be reissued).

The Notice also provides that employees who were offered coverage under one of these "non-hospital/non-physician services plans" are eligible to receive a premium tax credit, as long as the other criteria to receive a tax credit are met. However, employers that meet the limited exception will be considered to have offered minimum value coverage for the 2015 plan year and will not owe a penalty for the 2015 plan year even if the employee receives a premium tax credit.

Beginning in 2016, non-hospital/non-physician services plans will not be considered minimum value for any employers so employers that qualify for the limited exception will be subject to penalties on employees who receive a premium tax credit unless they offer more complete coverage.

The 2014 notice only applies to plans that claim to offer **minimum value** coverage even though they do not provide significant coverage for inpatient hospital and physician services. Although some have reported that "skinny" and "MEC" plans are no longer allowed, that is not correct. Plans that limit coverage to preventive care (often referred to as "skinny" or "MEC" plans) are permitted and appear to meet the criteria to be considered "minimum essential coverage." Employers may continue to offer a non-hospital/non-physician services plan, and that plan likely will meet the requirement to offer minimum essential coverage, but it will not meet a requirement to offer minimum value coverage.

2015 Updates

On September 1, 2015, the Department of the Treasury issued a supplemental notice of proposed rule making that would modify its current rule regarding the ACA minimum value standards to ensure that to meet minimum value requirements, a group health plan must meet or exceed an actuarial standard value of at least 60 percent and provide substantial coverage of inpatient hospital services and physician services. The purpose of the proposal is to incorporate the substance of the earlier HHS rules into IRS regulation.

Under the proposed rule, the actuarial value standard would apply as of December 31, 2013.

The requirement to cover substantial inpatient and physician services would apply for plan years beginning on or after November 3, 2014, for purposes of determining an individual employee's premium tax credit eligibility.

November 3, 2014, will also be the date used for determining employer-shared responsibility (play or pay) penalties, **except for the requirement of coverage for substantial hospital or physician services, which will not apply until the end of plan years beginning on or after March 1, 2015**, so long as the employer met the exception requirements outlined in 2014 (see above). The IRS also clarified that a binding written commitment "exists when an employer is contractually required to pay for an arrangement and a plan begins enrolling employees when it begins accepting employee elections to participate in the plan.

The IRS also noted that in regard to these rules "plan year" refers to the plan year in effect under the terms of the plan on November 3, 2014.

9/9/2015

Our access to PPACA Advisor resources can help you clear up PPACA questions and better craft your company's benefit strategy for the future.

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