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REFORM Update

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Minimum Value Plans without Hospital or Physician Services

The Employer Shared Responsibility provisions of the Affordable Care Act, commonly referred to as the employer mandate, take effect in 2015. In general, this mandate requires employers to offer full-time employees (i.e., those working 30 or more hours per week) medical coverage or pay a penalty. There are two potential liabilities for employers:

1. **Mandate penalty [Section 4980H (a)]**: The employer fails to offer *substantially all* of its full-time employees and their dependent children minimum essential coverage (MEC) under an employer-sponsored plan. To trigger this penalty, at least one full-time employee is certified as having received a premium tax credit to purchase coverage in the Health Insurance Marketplace. To avoid this penalty in 2015, the employer must offer coverage to at least 70 percent of full-time employees. For 2016, that number increases to at least 95 percent of full-time employees. The annual amount of this penalty is $2,000 for every full-time employee (less the first 80 employees in 2015, less the first 30 in subsequent years).
2. **Adequate coverage penalty [Section 4980H (b)]**: The employer offers MEC to substantially all full-time employees and their dependent children, but that coverage is not considered affordable or of minimum value for some employees. A $3,000 annual penalty will apply to each such employee who is certified as having received a premium tax credit to purchase coverage in the Marketplace.

MEC is defined as employer-sponsored health coverage that is not considered an excepted benefit. Affordable coverage means the cost for single coverage does not exceed 9.5 percent (9.56% in 2015) of an employee's household income. Minimum value means the plan is expected to cover at least 60 percent of eligible expenses.

Over the last several years, employers have been strategizing on how to comply with the employer mandate. Those that do not currently cover a significant population of full-time employees have been particularly challenged by the impending mandate. These employers do not necessarily have the budget to extend coverage to all full-time employees.

Some employers in this situation have considered offering a new type of plan to full-time employees, called a "minimum value" plan. A minimum value plan provides coverage for some medical services, but excludes coverage for others. For example, a minimum value plan may exclude coverage for inpatient hospital services, or possibly physician services.

The federal government's Minimum Value (MV) Calculator helps health plans to determine whether a plan meets the minimum value threshold. When the specific benefits of these plans are entered into the MV Calculator, they are indicated as having a value slightly above 60 percent.

The Department of Health and Human Services (HHS), the Internal Revenue Service (IRS) and the Department of Treasury (collectively referred to as the Departments) released IRS Notice 2014-69 to address minimum value plans. The Departments believe plans that fail to provide substantial coverage for inpatient hospital and/or physician services do not offer minimum value coverage. The Departments will issue proposed regulations shortly to address this issue. The intent is to finalize these regulations in 2015.

However, a number of employers are already in the process of implementing minimum value plans for full-time employees. As a result, this IRS Notice provides details on how employers are affected by the impending regulations. The Notice also addresses the impact on employees.

Employer Impact

Some employers will be allowed to maintain a minimum value plan during the 2015 plan year which does not include inpatient hospital or physician services. However, certain requirements must first be met:

1. The employer entered into a binding written commitment to adopt or began enrolling employees into a minimum value plan without inpatient hospital or physician services prior to November 4, 2014.
2. The employer relied on the results of the MV Calculator to determine whether the plan offered minimum value coverage.

The Departments anticipate that when final regulations are issued, they will not apply to these plans immediately if the above criteria are satisfied. These plans will be considered minimum value for the purposes of the Section 4980H employer mandate penalties until the end of the plan year (assuming the plan year began no later than March 1, 2015).

Employers will need to watch for the proposed and final regulations. These plans will not meet the minimum value requirements for plan years beginning after March 1, 2015.

Employee Impact

The Departments recognize that employees who are offered these minimum value plans may lack coverage for critical medical services. As a result, any employees offered minimum value plans without inpatient hospital or physician services may have the ability to qualify for premium subsidies in the Marketplace.

As it stands today, if an employer offers affordable, minimum value coverage to full-time employees, any employees eligible for that coverage are blocked from receiving subsidies in the Marketplace. However, employees **are not required** to treat plans without inpatient hospital or physician services as minimum value plans when determining their eligibility for tax credits in the Marketplace. For 2015 only, employees may be able to purchase subsidized coverage, and there will be no penalties assessed for the employer.

The Departments' Intended Approach

HHS will issue proposed regulations to indicate that a plan will not be considered minimum value if substantial coverage is not provided for inpatient hospital services and physician services. The proposed regulations will not allow employers to use the MV Calculator in the future for plans without these services.

It is anticipated that the proposed regulations will become effective at the point they are finalized. However, for plans that meet the above criteria, the final regulations will not apply until the end of the plan year.

Notice Requirement

An employer that is offering a minimum value plan without inpatient hospital or physician services will be required to do the following:

1. It must not state or imply in any disclosure that the offer of coverage under the minimum value plan prevents an employee from obtaining a premium tax credit in the Marketplace if the employee is otherwise eligible.
2. It must timely correct any prior disclosure which implied that the offer of coverage under the minimum value plan would prevent an employee from obtaining a premium tax credit if otherwise eligible.

Employers should review communications to make sure employees can clearly understand that being eligible for the minimum value plan will not prevent them from receiving tax credits in the Marketplace.

Concluding Thoughts

Certain employers were considering offering a minimum value plan that excluded coverage for inpatient hospital and/or physician services in 2015. These employers typically had large segments of full-time employees who were not previously offered medical benefits. This plan was a cost-effective option for employers facing unknown expenses for covering these newly eligible full-time employees.

These plans have been highly publicized because of their ability to be considered minimum value while excluding substantial benefits. Strong rumors had indicated that these plans would be a short-term solution. The government advised that additional guidance would be coming.

The good news for many employers that have begun enrolling, or have entered into a binding written commitment to adopt these plans, is that they will have one year to avoid potential penalties under the employer mandate. They will also have a better idea of how many of their full-time employees will likely elect coverage when it is offered.