

November 25, 2014

Minimum Value and Hospitalization Under The ACA

The IRS recently issued [Notice 2014-69](#) to clarify that plans that do not provide in-patient hospitalization or physician services (a Non-Hospital/Non-Physician Services Plan) do not provide minimum value (MV) under the Patient Protection and Affordable Care Act (PPACA). However, transition relief is provided for certain employers that adopted a Non-Hospital/Non-Physician Services Plan prior to November 4, 2014 (a Pre-November 4, 2014 Plan).

Minimum Value Requirements

Under the PPACA, a plan provides MV if the plan's share of the total allowed costs of benefits provided under the plan is at least 60 percent of the costs. If an employee is offered coverage under a plan that provides MV, the employee may not receive a premium tax credit (subsidy) for coverage in a healthcare exchange. If the plan of a covered employer does not provide MV, the employer will have to pay a fine of \$3,000 for every full-time employee under the PPACA that obtains coverage in an exchange and receives a premium tax credit. The agencies have allowed four methods for determining MV of a plan, including an online [MV Calculator](#) provided by the applicable government agencies.

Since publication of the original MV guidance, the agencies have become aware that certain group health plan benefit designs that do not provide for in-patient hospitalization services are being promoted to employers. Promoters of these plans determined that these plans met the requirements for MV, according to the MV calculator. The agencies issued Notice 2014-69 to correct this problem and provide limited transition relief.

The MV Calculator

The Notice clarifies that Non-Hospital/Non-Physician Services Plans do not provide MV under the PPACA. Accordingly, an employer will not be permitted to use the MV Calculator (or any actuarial certification or valuation) to demonstrate that a Non-Hospital/Non-Physician Services Plan provides MV. The IRS advises employers to consider the consequences of the inability to rely solely on the MV Calculator (or any actuarial certification or valuation) to demonstrate that a Non-Hospital/Non-Physician Services Plan provides MV for any portion of any taxable year ending on or after January 1, 2015, that follows finalization of the regulations.

Final Regulations

It is anticipated that final regulations will be issued in 2015 and will take effect immediately upon issuance and apply to 2015 plan years. The final regulations will correct the MV calculator so that plans not providing substantial in-patient hospitalization or physician services (or both) will not pass the MV requirements. As a result, a Non-Hospital/Non-Physician Services Plan (other than a

Pre-November 4, 2014 Plan) should not be adopted for the 2015 plan year. The agencies "anticipate" that the final regulations will exempt employers from applicable PPACA penalties for the pending plan year if the employer's plan is a so-called "Pre-November 4, 2014 Plan."

Transition Relief

Notice 2014-69 provides transition relief for Pre-November 4, 2014 Plans. A Pre-November 4, 2014 Plan is a plan that meets all of the following criteria:

- An employer entered into a binding written commitment to adopt or has begun enrolling employees in a plan prior to November 4, 2014.
- The employer relied on the defective MV Calculator in its design.
- The plan's terms as in effect on November 3, 2014, are not otherwise modified.
- The plan year begins no later than March 1, 2015.

Notice 2014-69 indicates the final regulations will be applicable in 2015 and only Pre-November 4, 2014 Plans will escape the application of the final regulations. Solely in these situations, the agencies anticipate that final regulations will not apply to the plan before the end of the plan year (as in effect under the terms of the plan on November 3, 2014), if that plan year begins no later than March 1, 2015.

Exchange Subsidy Eligibility

Pending issuance of final regulations, employees covered by a plan not providing a proper level of in-patient hospitalization/physician services will continue to be eligible for a premium tax, regardless of whether the applicable plan provides MV under the defective MV calculator and without regard to whether the plan is a Pre-November 4, 2014 Plan.

Employer Disclosure Requirements

Notice 2014-69 also provides that employers are obligated to correct or modify any employee/participant disclosures that indicate plans with inadequate in-patient hospitalization/physician services provide MV in light of Notice 2014-69. An employer that offers a Non-Hospital/Non-Physician Services Plan (including a Pre-November 4, 2014 Plan) to an employee must:

- not state or imply in any disclosure that the offer of coverage under the Non-Hospital/Non-Physician Services Plan precludes an employee from obtaining a premium tax credit, if otherwise eligible, and
- correct, in a timely manner, any prior disclosures that stated or implied that the offer of the Non-Hospital/Non-Physician Services Plan would preclude an otherwise tax-credit-eligible employee from obtaining a premium tax credit. Without this corrective disclosure, a statement (for example, in a summary of benefits and coverage) that a Non-Hospital/Non-Physician Services Plan provides MV will be considered to imply that the offer of such a plan precludes employees from obtaining a premium tax credit.

However, an employer that also offers an employee another plan that is not a Non-Hospital/Non-Physician Services Plan and that is affordable and provides MV is permitted to advise the employee that the offer of this other plan will or may preclude the employee from obtaining a premium tax credit.

Action Items

Employers should take the following steps in light of Notice 2014-69:

- Review plans for hospitalization and related physician care services and reassess whether

their plans provide MV.

- If substantial in-patient hospitalization/physician services are not provided under their plans, determine whether the plans are Pre-November 4, 2014 Plans.
- Proceed with great care in assessing whether their respective plans meet the Pre-November 4, 2014 Plan requirements.
- Assess whether defective plans that are not Pre-November 4, 2014 Plans can be modified quickly to incorporate substantial in-patient hospitalization/physician services.

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