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## Affordability and Minimum Value Rules Released

The agencies have released new [rules](#) related to “affordability” and “minimum value” (MV) for employer-sponsored health coverage. The rules include significant changes related to the premium discounts employers offer employees who participate in wellness programs to determine if the coverage passes the healthcare reform “pay or play” shared responsibility tests. Most notably under these rules, most plans will receive “credit” for wellness incentives toward the “pay or play” MV and affordability requirements only for the 2014 plan year. After that, plans will not receive credit (except for tobacco cessation incentives). The new rules effectively create one rule that applies to completing a wellness program that addresses tobacco use, and an entirely different rule for any other kind of wellness program.

**Background.** Determining whether employer-sponsored health plans meet healthcare reform’s affordability and MV standards will be a significant factor in determining liability for “pay or play” employer shared responsibility payments. Beginning in 2014, large employers must pay shared responsibility payments if they have at least one full-time employee receiving a premium tax credit for exchange coverage. Employees who are eligible for employer-sponsored health coverage generally will not be eligible for premium tax credits, unless the coverage offered is not affordable (i.e., the required employee contribution for self-only coverage exceeds 9.5% of wages) or the coverage does not provide MV (i.e., the plan’s share of total allowed costs of benefits is less than 60% of such costs). Until now, it wasn’t clear whether premium discounts some employers provide for wellness program participation would be included or excluded when running the MV and affordability tests.

**Wellness and Minimum Value.** Under the new rules, plans calculate MV assuming that every eligible individual satisfies the terms of a program relating to prevention or reduction of tobacco use (e.g., if monthly premium is \$100 for single tobacco free coverage and \$120 for tobacco coverage, employer can use the \$100 premium assessment to test for affordability). However, plans will not be able to treat as earned any other wellness incentives, such as those related to BMI, cholesterol levels, or participating in a disease management (DM) program (e.g., if monthly premium is \$100 for single DM program coverage and \$120 for non-DM program coverage, employer must use the \$120 premium assessment to test for affordability).

**Wellness and Affordability.** Under the new rules, plans determine whether the coverage is affordable by assuming that participants satisfy the terms of any wellness program designed to prevent or reduce tobacco use. As is true for the MV test, plans will be able to determine whether

they meet the affordability standard assuming that participants earn any incentives (e.g., reduced premiums) related to tobacco cessation. However, plans cannot treat other wellness incentives as earned.

**Delayed Effective Date.** The rules provide for limited transition relief for employers concerned that their plans will not pass the above tests due to the failure to take into account a premium discount or surcharge under a wellness plan. Under this one year delay of the rules, for plan years beginning before January 1, 2015, an employer will not be subject to an assessable payment with respect to an employee who received a premium tax credit because the offer of coverage was not affordable or did not satisfy MV, if it would have been affordable or satisfied MV based on the total employee premium and cost-sharing for that plan that would have applied if the employee had satisfied the requirements of wellness plans, including requirements unrelated to tobacco use. This one-year delay applies only to wellness program rules in effect on May 3, 2013.

**New Minimum Value Safe Harbors.** There are three alternative methods for determining whether employer-sponsored health plans provide MV: (1) the [MV calculator](#), (2) a design-based safe harbor, or if the first two methods are not applicable, (3) actuarial certification. The new rules now include the following design-based safe harbors, which are examples of plan designs that would clearly satisfy the 60% threshold for MV. The IRS may modify or add to these safe harbors in final regulations:

- A plan with a \$3,500 integrated medical and drug deductible, 80% plan cost-sharing, and a \$6,000 maximum out-of-pocket limit for employee cost-sharing;
- A plan with a \$4,500 integrated medical and drug deductible, 70% plan cost-sharing, a \$6,400 maximum out-of-pocket limit, and a \$500 employer contribution to an HSA; and
- A plan with a \$3,500 medical deductible, \$0 drug deductible, 60% plan medical expense cost-sharing, 75% plan drug cost-sharing, a \$6,400 maximum out-of-pocket limit, and drug co-pays of \$10/\$20/\$50 for the first, second, and third prescription drug tiers, with 75% coinsurance for specialty drugs.

**HRAs and HSAs.** The rules separately address how employer contributions to HRAs and HSAs are treated in determining MV and affordability. Specifically, for purposes of MV:

- All amounts contributed by an employer to an HSA are taken into account in determining the plan's share of costs and are treated as amounts available for first dollar coverage; and
- Amounts newly made available under an HRA integrated with an employer-sponsored plan count for purposes of MV if they can only be used for cost-sharing, and not to pay insurance premiums.

Affordability determinations can take into account amounts newly available for the current plan year under an HRA integrated with an employer plan if the employee may use the amounts only for premiums, or may choose to use the amounts for either premiums or cost-sharing.

Should you have questions about this or any aspect of federal health insurance reform, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



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