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IRS Provides Guidance to Determine Minimum Value and Affordability Rules for HRAs, HSAs and Wellness Incentives

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On April 30, 2013, the Internal Revenue (IRS) released proposed regulations which provide guidance on health care reform's premium tax credit for the health insurance exchanges:

- * for determining whether coverage under eligible employer-sponsored plans provides minimum value (MV), and
- * how health reimbursement arrangements (HRAs), health savings accounts (HSAs) and wellness program incentives will be used in determining minimum value and affordability.

The Minimum Value (MV) Calculation

Beginning in 2014, individuals who purchase coverage under a qualified health plan through an Exchange may receive a premium tax credit only if he or she was not offered affordable coverage under an eligible employer-sponsored plan that does not provide minimum value (MV) or is not affordable.

A plan fails to provide MV if its share of the total allowed costs of benefits provided under the plan is less than 60% of the costs. This proportion of the total allowed costs of benefits paid by the plan is called the plan's MV percentage. In general, the MV percentage is determined by:

- * Dividing the cost of certain benefits the plan would pay for a standard population by the total cost of certain benefits for the population, including amounts the plan pays and amounts the employee pays through cost-sharing; and.

* Converting the result to a percentage.

The IRS provides in the proposed regulations that employer-sponsored self-insured and insured large group plans need not cover every essential health benefit (EHB) category or conform their plans to an EHB benchmark that applies to qualified health plans.

All amounts contributed by an employer for the current year to an HSA are taken into account in determining the plan's share of costs for MV purposes; and treated as amounts available for first dollar coverage.

All amounts that are newly made available for a year under an HRA that is integrated with an eligible employer-sponsored plan for the current plan year are taken into account for MV purposes if the amounts may be used only for cost-sharing and not to pay insurance premiums.

Minimum Value and Wellness Program Incentives

The IRS provides in the proposed regulations that a plan's share of costs for MV purposes is determined without regard to reduced cost-sharing (for example, deductibles or copayments) available under a nondiscriminatory wellness program. But if a nondiscriminatory wellness program is designed to prevent or reduce tobacco use, MV may be calculated assuming that every eligible individual satisfies the program's terms relating to prevention or reduction of tobacco use.

Affordability Determination

For the purposes of determining affordability, HRAs and wellness program incentives can be counted. Amounts that are newly made available under an HRA that is integrated with an eligible employer-sponsored plan for the current plan year are taken into account only in determining affordability if the employee may either:

- * Use the amounts only for premiums.
- * Choose to use the amounts for either premiums or cost-sharing.

For wellness programs, affordability is determined by assuming that each employee fails to satisfy the wellness program's requirements, except those of a nondiscriminatory wellness program related to tobacco use. This means the affordability of a plan that charges a higher initial premium for tobacco users is determined based on the premium charged to either:

- * Non-tobacco users.
- * Tobacco users who complete the related wellness program (for example, attending smoking cessation classes).

In the proposed regulations, the IRS includes special transition relief, for the employer mandate penalty purposes, for group health plan years beginning

before January 1, 2015. Under this relief, certain employers are not subject to this penalty for employees who received a premium tax credit because the employer's offer of coverage was unaffordable or did not provide MV if the coverage generally would have been affordable or satisfied MV based on required employee premium and cost-sharing applicable for the plan if the employee satisfied wellness program requirements in effect on May 3, 2013.

The transition relief applies for rewards expressed as either:

- * A dollar amount.
- * A fraction of the total required employee premium contribution (or, if applicable, employee cost-sharing).

Additional Minimum Value Safe Harbors to Be Announced

Employers can use the MV Calculator provided by HHS and the IRS to determine whether a plan provides MV. In addition, the IRS anticipates that future guidance will include several safe harbors that are examples of plan designs that would clearly satisfy the 60% threshold if measured using the MV Calculator.

In addition, the IRS proposed that plan designs meeting the following specifications would be safe harbors for determining MV, provided that the plans cover all the benefits included in the MV Calculator:

- * 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.
- * 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.

For a copy of the proposed regulations, please click on the link below:

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-03/pdf/2013-10463.pdf>