



May 22, 2013

Determination of Affordability and Minimum Value

Background

The IRS has released proposed regulations providing guidance for determining the “affordability” and “minimum value” of employer-sponsored plans. The guidance includes information on an individual’s qualification for premium tax credits, possible employer penalties under the ACA shared responsibility rules, and how health savings accounts (HSAs), health reimbursement accounts (HRAs) and wellness program incentives should be factored in when determining affordability and minimum value.

Affordable Coverage

For purposes of the §4980(H) employer shared responsibility rules, coverage offered by an employer is deemed ‘affordable’ if the employee’s contribution for self-only coverage does not exceed 9.5% of household income.

Wellness Incentives

In a ruling that is a disappointment to employers who sponsor wellness programs, a plan’s affordability must be determined based on the cost for an employee to participate in the plan without taking into account incentives for wellness plan participation. The only exception to this rule is for a wellness program related to tobacco use. Employers are able to use the applicable “non-smoker” rate to determine a plan’s affordability, as long as the smoking related incentive program meets the requirement of a HIPAA non-discriminatory wellness program.

HRA Employer Contributions

New employer contributions under an integrated HRA are included in determining affordability of the employer-sponsored group plan, if the employee may use the HRA amounts for premiums only, or may choose to use the amounts for either premiums or cost-sharing. This affordability rule would not apply to HRA premiums used by employees to purchase their own individual health insurance coverage.

Minimum Value

Employer-sponsored coverage is deemed to provide ‘minimum value’ so long as the plan has an actuarial value of at least 60%. There are four methods allowed for determining minimum value:

- The Minimum Value Calculator released by the IRS and HHS (available at <http://cciio.cms.gov/resources/regulations/index.html>).
- Any safe harbor plans set forth by the HHS and IRS.
- An actuarial certification by a member of the American Academy of Actuaries.
- For small employers, by offering a plan that meets the requirements of one of the “metal levels” defined by the ACA (bronze, silver, gold or platinum).

When using the Minimum Value Calculator, the plan’s percentage value may be adjusted in accordance with actuarial results for plan features that are not included in the parameters of the calculator. Plans with nonstandard features for which minimum value cannot be used to determine the plan’s value are required to use the actuarial certification method.

HSA, HRA and Wellness Plan Impact on Minimum Value

- HSA employer contributions - All employer HSA contributions for the current plan year are included in determining the plan’s minimum value. Note that employee pre-tax contributions to an HSA account are not included in the plan value.
- HRA employer contributions - Similar to the rules proposed for HSAs, employer contributions newly made available under an integrated HRA for the current plan year are included in determining minimum value, but only if the employee may use the amounts solely for cost-sharing and not to pay insurance premiums.

- Wellness incentives - As with the rules proposed for affordability, minimum value is determined without considering the potential reduced cost-sharing under a wellness program, except wellness programs related to tobacco use.

Safe Harbor Plan Designs

The IRS has proposed a number of plan designs as safe harbors, which are intended to provide easy ways to determine whether a plan meets minimum value without having to use the Minimum Value Calculator. Plans with plan designs that clearly exceed the safe harbor plans can be assumed to provide minimum value. The current “safe harbor” plans include:

- A plan with a \$3500 integrated medical and drug deductible, 80% plan cost-sharing, and \$6000 maximum out-of-pocket limit for employee cost-sharing;
- A plan with a \$4500 integrated medical and drug deductible, 70% plan cost-sharing, and \$6400 maximum out-of-pocket limit for employee cost-sharing; with a \$500 employer contribution to an HSA;
- A plan with a \$3500 medical deductible, \$0 drug deductible, 60% plan medical expense cost-sharing, 75% plan drug cost-sharing, a \$6400 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.

Summary

Large employers must know whether their plans provide minimum value for the purpose of the ACA shared responsibility rules. However, all employers will need this information to fulfill the requirement of the Exchange Notice that must be sent by October 1, 2013. The DOL recently released guidance regarding the Exchange Notice which clarified that a required element of the notice is that it must include a statement if the employer’s plan provides minimum value.

We continue to review the new proposed regulations and the model notices, and will provide further direction to our clients within the next 30 days. In the meantime, if you have any questions, please contact your Parker, Smith & Feek Benefits Team.

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