buckconsultants

xerox

FYI®
For Your Information®

Volume 36 | Issue 49 | May 24, 2013

IRS issues guidance on how wellness incentives affect affordability and minimum value

To avoid penalties under health care reform, employers must offer health coverage that is affordable and satisfies minimum value requirements. The IRS recently issued guidance that addresses how wellness program incentives may affect affordability and minimum value determinations. Importantly, with the exception of wellness programs designed to prevent or reduce tobacco use, affordability and minimum value for purposes of the employer penalties must be determined assuming that employees fail to satisfy the wellness program requirements. This will potentially subject more employer plans to penalties. The guidance also provides clarification of the treatment of HSAs and HRAs in determining affordability and minimum value, and provides several safe harbor designs for determining satisfaction of the minimum value requirements.

Background

Under the Affordable Care Act (ACA), although individuals eligible for employer-sponsored coverage will be able to enroll in an Exchange plan, they will not be eligible for a premium tax credit unless the employer coverage fails to be "affordable" and/or fails to provide "minimum value." An employer that has full-time employees who receive low-income subsidies because the coverage fails to meet these requirements may be subject to a penalty.

On January 3, 2013, the IRS published proposed regulations that discussed affordability and provided several safe harbor approaches for employers to determine whether their health coverage is affordable for purposes of the penalty. (See our January 30, 2013 *For Your Information*.) Final regulations for determining minimum value were published on February 25, 2013. (See our February 27, 2013 *For Your Information*.) Neither set of regulations addressed how wellness program incentives would be treated in determining affordability and minimum value.

On May 3, 2013, the IRS published proposed regulations that provide important guidance on the treatment of wellness program incentives, as well as providing additional clarification on the treatment of health savings accounts (HSAs) and health reimbursement accounts (HRAs) in determining minimum value and affordability. The

guidance also provided several "safe harbor" plan designs for determining satisfaction of the minimum value requirement.

Minimum value

Beginning in 2014, if an employer offers a health plan that fails to provide a "minimum value" (MV) of at least 60%, its employees who enroll in an Exchange plan may be eligible for low-income subsidies. Under the ACA's "shared responsibility" provisions, a large employer (i.e., an employer who employed at least 50 full-time employees during the preceding calendar year) could be subject to a $3,000 penalty for each full-time employee who receives subsidized Exchange coverage.

MV is the ratio of a plan's anticipated spending for essential health benefits (EHB) covered under the plan to the total allowed EHB charges for a standard population:

$$\textbf{Minimum Value} = \frac{\text{Anticipated EHB costs reimbursed by the plan}}{\text{Anticipated EHB costs covered by "standard" self-insured plan}}$$

Employer contributions for the current plan year to an HSA, and amounts newly made available under an HRA that can only be used to reduce cost sharing under the employer-sponsored plan, are also taken into account in determining MV. However, the full amount of the employer contribution is not used for this purpose; instead, only the amount of expected spending for health care costs reimbursed by the HSA or HRA in the benefit year are taken into account.

> Buck Comment. A group health plan that covers all the EHB included in the MV Calculator generally will satisfy the MV requirement easily. However, if a plan does not cover one or more of these EHB (e.g., hospitalization, prescription drugs, outpatient services), it may not satisfy MV.

Plan sponsors can use one of three methods for determining whether a plan satisfies the MV requirement:

- **MV Calculator** — an MV Calculator, which is available on the HHS website.
- **Design-based safe harbor checklists** — an array of design-based safe harbors in the form of checklists that can be used to determine whether a plan provides MV.

  The proposed regulations provide three design-based safe harbor plans. Plans meeting these designs, and which cover all of the EHB included in the MV Calculator, satisfy MV. (See table on page 3.)

The MV Calculator includes the following EHB:

- Emergency room
- Inpatient hospital services, including mental health and substance abuse services
- Outpatient facility (e.g. ambulatory surgery center) and physician services
- Outpatient mental health and substance abuse disorder services
- Primary care and specialist visits
- Imaging (CT/PET scans, MRI)
- Rehabilitative speech, occupational and physical therapy
- Preventive care, screenings and immunizations
- Laboratory outpatient and professional services
- X-rays and diagnostic imaging
- Skilled nursing facility
- Generic, preferred brand and non-preferred brand drugs

Design-based safe harbor plans that satisfy minimum value

	Individual deductible		Coinsurance	Individual out-of-pocket maximum	Prescription drug copayments	Employer individual annual HSA contribution
	Medical	Prescription drug				
(1)	$3,500 integrated medical and drug		80% all services	$6,000	N/A	N/A
(2)	$4,500 integrated medical and drug		70% all services	$6,400	N/A	$500
(3)	$3,500	$0	60% medical 75% prescription drug	$6,400	$10/$20/$50 Specialty drugs at 75%	N/A

- **Actuarial certification** — if a plan contains non-standard plan features where neither the MV Calculator nor the safe harbor checklists can be used, then a member of the American Academy of Actuaries must provide certification that the plan satisfies the MV requirement.

  Buck Comment. If each plan provision of the group health plan is as good, or better, than those included in one of the safe harbor designs, the group health plan satisfies MV. While the first two safe harbor designs should be easy to use for most high-deductible plans with an HSA, none of these safe harbor designs can be used for many common plan designs that include copayments for office visits and other services. If satisfaction of MV cannot be determined using either the MV Calculator (without adjustments) or one of the safe harbor designs, then an actuarial certification is required even if the plan design easily satisfies MV.

Impact of HRAs and HSAs on affordability

As discussed above, if an employer does not offer a health plan that is affordable, its employees who enroll in an Exchange plan may be eligible to receive a federal premium subsidy and qualify for reduced cost sharing. Employer-sponsored coverage is affordable if the employee contribution for self-only coverage does not exceed 9.5% of the employee's household income. Under the ACA's "shared responsibility" provisions, a large employer that does not provide affordable coverage could be subject to a $3,000 penalty for each full-time employee who receives subsidized Exchange coverage. The proposed regulations provide that amounts newly made available under an HRA that is integrated with an employer-sponsored plan can be taken into account to determine affordability if employees can use the amounts:

- Only for premiums, or
- For either premiums or cost sharing

Because HSA funds generally cannot be used to pay insurance premiums, these amounts do not affect affordability.

Impact of wellness program incentives on affordability and minimum value

The proposed regulations divide wellness programs into two categories:

- Programs designed to prevent or reduce tobacco use
- All other wellness programs

While HIPAA-compliant wellness programs must be nondiscriminatory and available to all similarly situated employees, the preamble to the regulations states that "despite the safeguards of the regulations governing wellness incentives, certain individuals inevitably will face barriers to participation and fail to qualify for rewards." Therefore, with the exception of wellness programs designed to prevent or reduce tobacco use, both affordability and MV will be determined assuming that the each employee fails to satisfy the requirements of the wellness program. For wellness programs that are designed to reduce or prevent tobacco use, affordability and MV can be determined assuming that each employee satisfies the requirements of the wellness program.

> Buck Comment. The regulations provide no explanation as to why wellness programs focused on tobacco use are treated differently, except to note that this exception is consistent with other health reform provisions "reflecting a policy about individual responsibility regarding tobacco use," including the ability of insurers to charge higher premiums based on tobacco use. Wellness programs that combine tobacco and non-tobacco provisions into a single incentive may have to assume the employee fails to satisfy the wellness program unless the incentive is redesigned.

Impact of wellness incentives, HSAs, and HRAs on affordability and minimum value

	Can incentives/amounts applied to premiums be used to determine affordability?	**Can incentives/amounts applied to cost-sharing be used to determine minimum value?**
Wellness programs — non- tobacco cessation	No. Affordability is determined assuming employee fails to earn incentive.	No. MV is determined assuming employee fails to earn incentive.
Wellness programs — tobacco cessation	Yes. Affordability is determined assuming employee earns incentive.	Yes. MV is determined assuming employee earns the incentive.
Employer HSA contribution	No, since HSA funds cannot be used to pay premiums.	Yes.
HRA contribution	Yes, if employee can use HRA amounts to reduce premiums or may use HRA amounts for either reducing premiums or cost sharing.	Yes, but only if HRA amounts can only be used for reduced cost sharing.

Wellness program transition relief

The proposed regulations include important transition relief for wellness programs for plan years beginning before January 1, 2015 (2014 for calendar year plans). For purposes of the employer shared responsibility requirement, affordability and MV can be determined assuming that each employee satisfies the wellness program requirements.

However, this transition rule only applies to wellness program terms and incentives in effect as of May 3, 2013, and only for categories of employees eligible for the program as of May 3, 2013, regardless of when the employee was hired.

> Buck Comment. This transition relief only affects the employer shared responsibility requirement — the $3,000 penalty — and does not affect an employee's eligibility for the federal premium subsidy.

In closing

With these proposed regulations, sponsors of plans with wellness programs, HRAs, and/or HSAs now have the guidance needed to determine whether those plans are affordable and provide minimum value. Plan sponsors will need to make those determinations and include information in future reporting.

Authors
Richard Stover, FSA, MAAA
Leslye Laderman, JD, LLM

Produced by the Knowledge Resource Center of Buck Consultants at Xerox
The Knowledge Resource Center is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your account executive or email fyi@xerox.com.