

BREAKING NEWS



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FEDERAL DEPARTMENTS FIND THAT NON-HOSPITAL/NON-PHYSICIAN SERVICES PLANS DO NOT QUALIFY AS MINIMUM VALUE COVERAGE

Executive Summary

- In 2015, the Employer Mandate takes effect, requiring employers to offer *substantially all* full-time employees (who average 30 or more hours of service per week) MEC or face a penalty. Even if an employer offers *substantially all* of its employees MEC, employers may still face a penalty if they fail to offer affordable coverage that provides minimum value. Minimum value is defined as a plan that provides at least 60% actuarial value to the employee.
- The Departments of Health and Human Services (HHS) and the Department of Treasury believe that any plan that claims to provide minimum value under the Minimum Value Calculator provided by the Federal government but fails to provide substantial coverage for inpatient hospitalization services or physician services does not provide minimum value coverage.
- The Departments provide that employees offered Minimum Value Plans that lack coverage for substantial medical services (i.e. inpatient hospitalization or physician services) are entitled to subsidized coverage in the Exchange, as these plans are considered as not providing minimum value.
- An employer that entered into a binding contract (or enrolled employees into an MV Plan) that lacks substantial medical services (i.e. inpatient hospitalization or physician services) prior to November 4, 2014 and relied upon the MV Calculator will not be subject to penalties in 2015 (for plans that begin no later than March 1, 2015) for failing to offer what the Federal government considers to be a non-minimum value plan. Employers who offer the MV Plan that lacks substantial medical services are prohibited from communicating to employees that they are not entitled to a subsidy because the employer is offering an MV Plan that lacks substantial medical services.

In 2015, the Employer Mandate takes effect. In general, the Mandate requires employers to offer full-time employees (who average 30 or more hours of service per week) coverage or face a penalty. There are actually two potential liabilities for employers:

1. **Mandate penalty [Section 4980H (a)]:** An employer is subject to an annual penalty of \$2,000 per full-time employee (minus the applicable amount of employees) if the employer fails to offer *substantially all* of its full-

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time employees and their dependent children minimum essential coverage (MEC) under an employer-sponsored plan, and at least one full-time employee purchases subsidized coverage in the Exchange. For 2015, *substantially all* means an employer would need to offer 70% of its full-time employees (and dependent children) MEC. For 2016, *substantially all* means an employer would need to offer 95% of its full-time employees (and their dependent children) MEC.

2. **Adequate Coverage penalty [Section 4980H (b)]:** The employer meets the requirement of offering *substantially all* of its full-time employees (and their dependent children) MEC, but the coverage may not be affordable or may not provide minimum value for some employees. If any of the employees who were not offered affordable, minimum value coverage are certified as having received subsidized coverage in the Exchange, an annual penalty of \$3,000 per employee would apply.

MEC is defined as employer-sponsored health coverage that is not considered an excepted benefit. Affordable coverage means that the cost to an employee for self-only coverage does not exceed 9.5% (9.56% in 2015) of his/her household income. Minimum value means the plan is expected to cover at least 60% of eligible expenses incurred by the employee.

Over the last several years, employers have been building strategies on how to comply with the Employer Mandate. Employers that currently do not offer coverage to a significant population of full-time employees have been particularly challenged by the Employer Mandate, as these employers do not necessarily have the budget to extend coverage to all of their full-time employees.

Some employers in this situation have considered offering a new type of plan to full-time employees. These plans are typically called "Minimum Value Plans." They provide coverage for some medical services, but exclude coverage for significant services; for example, a Minimum Value Plan may exclude coverage for inpatient hospitalization services or physician services.

These plans are called Minimum Value Plans because when the specific plan benefits are entered into the Federal government's Minimum Value Calculator (MV Calculator), the Calculator indicates a value slightly above 60%. The MV Calculator helps health plans determine whether the plan meets the minimum value threshold.

The Departments of Health and Human Services (HHS), the Internal Revenue Service (IRS), and the Department of Treasury (hereafter referred to as the Departments) released IRS Notice 2014-69 to address these Minimum Value Plans. The Departments believe plans that fail to provide substantial coverage for inpatient hospitalization services or physician services do not provide minimum value coverage. The Departments will issue proposed regulations shortly to address this issue. The intent is to finalize these regulations in 2015.

However, a number of employers are currently in the process of offering these plans to full-time employees. As a result, this IRS Notice provides details on how employers will be affected by these impending regulations. In addition, this Notice also addresses the potential impact on employees who enroll into these Minimum Value Plans.

Employer Impact

Some employers will be allowed to maintain a Non-Hospital/Non-Physician Services Minimum Value Plan for the 2015 plan year. However, certain requirements must be met:

1. The employer must have entered into a binding written commitment to adopt or have already begun enrolling employees into a Non-Hospital/Non-Physician Services Minimum Value Plan prior to November 4, 2014; and
2. The employer must have relied on the results of the MV Calculator to determine that their plan offered minimum value coverage

If these requirements have been met, the Departments anticipate that when final regulations are issued, they will not disrupt the offer of Minimum Value Plans immediately. These plans will be considered minimum value for Section 4980H Employer Mandate penalty purposes until the end of the plan year (assuming the plan year begins no later than March 1, 2015).

Employers will need to watch for the proposed and final regulations in the future. These plans will not meet the minimum value requirements for plan years that begin after March 1, 2015 or for plan years beginning in 2016 and thereafter.

Employee Impact

The Departments recognize that employees that are offered these Minimum Value Plans will lack coverage for substantial medical services (i.e. inpatient hospitalization or physician services). As a result, any employee that is offered a Non-Hospital/Non-Physician Services Minimum Value Plan may have the ability to qualify for premium subsidies in the Exchange, despite an employer not being subject to penalties for failing to offer what the Federal government considers to be a non-minimum value plan. Normally, employees would not be eligible for a subsidy in the Exchange if they were offered an affordable, minimum value plan. However, employees who are offered these Minimum Value Plans in 2015 will not be barred from receiving a subsidy in the Exchange because these plans are not considered minimum value plans by the Federal government.

The Departments' Intended Approach

HHS will issue proposed regulations to indicate that a plan will not be considered as providing minimum value if it does not provide for inpatient hospital services or physician services. The proposed regulations will not allow employers to use the MV Calculator for a Non-Hospital/Non-Physician Services Minimum Value Plan going forward. It is anticipated that the proposed regulations will become effective when finalized. However, for plans that meet the requirements listed above, the final regulations will not apply until the end of the 2015 plan year (so long as the plan year begins no later than March 1, 2015).

Notice Requirement

An employer offering a Non-Hospital/Non-Physician Services Minimum Value Plan must do so under the following rules:

1. An employer cannot state or imply in any disclosure that the offer of coverage under a Non-Hospital/Non-Physician Services Minimum Value Plan precludes an employee from obtaining a subsidy in the Exchange if the employee is otherwise eligible for a subsidy.
2. An employer must—in a timely manner—correct any prior disclosure that would have implied that the offer of coverage under a Non-Hospital/Non-Physician Services Minimum Value Plan would preclude an employee from obtaining a subsidy in the Exchange if the employee is otherwise eligible for a subsidy.

Therefore, employers should review communications related to a Non-Hospital/Non-Physician Services Minimum Value Plan to ensure that employees understand that the plan will not block them from receiving potential subsidies through the Exchange.

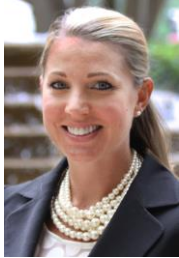
Concluding Thoughts

Certain employers were previously considering offering a Minimum Value Plan that excludes coverage for inpatient hospitalization and/or physician services in 2015. These employers typically had large segments of full-time employees that were not offered medical benefits. The Minimum Value Plan was a seemingly cost-effective option for employers facing the unknown expense of covering these newly eligible full-time employees.

These plans have been highly publicized because of their inexpensive cost and ability to protect employers from exposure to the Employer Mandate penalties if they failed to offer minimum value coverage. However, the low cost of these plans is attributable to the exclusion of substantial coverage benefits (i.e. inpatient hospital services or physician services). Strong rumors indicated that these plans would be a short-term solution. The Federal government has now substantiated those rumors by indicating that guidance regarding these plans would be forthcoming.

This Notice has good news for employers that have begun enrolling or have entered into a binding written commitment to adopt these plans: they will have one year to use them (so long as the plan year begins no later than March 1, 2015) to escape potential penalties under the Employer Mandate. They will also have some indication of how many of their full-time employees will elect coverage if benefits are offered to them in the future.

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