NEACE LUKENS

COMPLIANCE Observer

immediate release ALERT

May 17, 2012

IRS Requests Comments on Determining Minimum Value and Related Reporting Requirements

Effective for 2014, the Affordable Care Act (ACA) provides premium tax credits to eligible individuals who purchase qualified health plan coverage through a health insurance exchange (Exchange). To qualify for the premium tax credit, an individual cannot be eligible for other minimum essential health coverage, including coverage under an employer-sponsored plan that is affordable to the individual and provides minimum value.

A large employer may be liable for a penalty under ACA's "pay or play" rules if any of its full-time employees receives a premium tax credit through an Exchange. This may happen if a large employer's plan does not provide minimum value. An employer is a "large employer" for a calendar year if it employed an average of at least 50 full-time employees on business days during the preceding calendar year.

In addition, under ACA's individual mandate, individuals are generally required to pay a penalty if they do not have minimum essential coverage. ACA also contains reporting requirements to implement the law's penalty provisions for large employers and individuals.

The Internal Revenue Service (IRS) released three notices requesting comments on methods for determining minimum value under ACA and two related reporting requirements. These notices do not provide final guidance on ACA compliance. Rather, they describe potential approaches that the IRS may incorporate into future proposed regulations.

IRS NOTICE 2012-31: DETERMINING MINIMUM VALUE

ACA provides that a plan fails to provide minimum value if the plan's share of total allowed costs of benefits provided under the plan is less than 60 percent of those costs. The IRS expects that an employer-sponsored plan would be able to use one of several alternative approaches to ascertain whether it meets the minimum value threshold.

In **Notice 2012-31**, the IRS outlines the following three potential approaches that could be used to determine whether an employer-sponsored plan provides minimum value:

- ***Approach One: Calculators –*** An actuarial value (AV) calculator or a minimum value (MV) calculator would be made available by the Departments of Health and Human Services (HHS) and Treasury. In either case, the calculator would permit an employer-sponsored plan to enter information about the plan's benefits, coverage of services and cost-sharing terms to determine whether the plan provides minimum value.
- ***Approach Two: Checklists –*** An array of design-based safe harbors in the form of checklists that employers could compare to their plans' coverage would be provided. If the employer-sponsored plan's terms are consistent with or more generous than any one of the safe harbor checklists, the plan would be treated as providing minimum value. This method would not involve calculations and could be completed without an actuary.

- ***Approach Three: Actuarial Certification –*** An actuarial certification approach would be established for plans with nonstandard features that preclude the use of the calculator or checklist methods. Nonstandard features would include quantitative limits (for example, limits on covered hospital days or physician visits) on any of four core categories of benefits – physician and mid-level practitioner care, hospital and emergency room services, pharmacy benefits and laboratory and imaging services. Under this approach, plans would be able to generate an initial value using a calculator and then engage a certified actuary to make appropriate adjustments to take into consideration the nonstandard features.

According to a report issued by HHS in November 2011, approximately 98 percent of individuals currently covered by employer-sponsored plans are enrolled in coverage that has an actuarial value of at least 60 percent, using methods similar to those described above.

IRS NOTICE 2012-32: REPORTING MINIUMUM ESSENTIAL COVERAGE

Effective for 2014, ACA requires every health insurance issuer, sponsor of a self-insured health plan, government agency that administers government-sponsored health insurance programs and other entity that provides minimum essential coverage to file an **annual return** with the IRS reporting information for each individual who is provided with this coverage. The entity filing the report must also provide a written statement to each individual listed on the return that shows the information reported to the IRS. This reporting will allow the IRS to implement ACA's individual mandate.

IRS Notice 2012-32 invites comments on this reporting requirement, including how to determine when an individual's coverage begins and ends and how to coordinate and minimize duplication of reporting under this requirement and similar reporting requirements. The IRS anticipates that health insurance issuers, and not employers, will be responsible for reporting minimum essential coverage under insured group health plans.

IRS NOTICE 2012-33: REPORTING LARGE EMPLOYER COVERAGE

Beginning in 2014, large employers subject to ACA's "pay or play" requirements must file a return with the IRS that reports the terms and conditions of the health care coverage provided to the employer's full-time employees for the calendar year. Related statements must also be provided to employees. The IRS will use this information to verify employer-sponsored coverage and administer ACA's penalty provisions for large employers**. IRS Notice 2012-33** invites comments on this employer reporting requirement, including how to coordinate this reporting requirement with similar ones to minimize duplication.

MORE INFORMATION

A copy of IRS Notice 2012-31 is available at: www.irs.gov/pub/irs-drop/n-12-31.pdf

A copy of IRS Notice 2012-32 is available at: www.irs.gov/pub/irs-drop/n-12-32.pdf

A copy of IRS Notice 2012-33 is available at: www.irs.gov/pub/irs-drop/n-12-33.pdf