

New IRS Proposed Regulations Defining Minimum Value for Employer Shared Responsibility Provisions

JENNIFER TRUONG

On September 1, 2015, the Internal Revenue Service (“IRS”) issued new proposed regulations on the determination of whether an employer-sponsored health plan provides “minimum value,” for purposes of the employer “offer of coverage requirement under Section 4980H of the Internal Revenue Code Under the proposed regulations and consistent with [IRS Notice 2014-69](#), a health plan provides minimum value only if (1) the plan covers at least 60% of the total allowed costs of benefits that are expected to be provided under the plan and (2) plan benefits include substantial coverage of inpatient hospital services and physician services. Notice 2014-69 was previously issued to address a “loophole” that allowed “skinny plans” that did not cover in-patient hospital stays or provided limited coverage for such services to meet the “minimum value” requirement via the Department of Health and Human Services’s “minimum value calculator.” That calculator did not require a plan to input the coverage available for inpatient hospitalization to determine if the plan met the 60% actuarial value minimum and, as a consequence, allowed plans that excluded coverage for such services to satisfy the “minimum value” standard.

Proposed to apply to plan years beginning after November 3, 2014, the regulations apply immediately, even for plans that are in the middle of a plan year. However, limited transition relief is available for plans that do not currently provide substantial coverage of hospital and physician services if the employer plan sponsor entered into a binding written commitment to adopt the noncompliant plan terms, or began enrolling employees in a noncompliant plan, before November 4, 2014. Such “skinny plans” have until the plan year beginning on or after March 2, 2015 to comply with the requirement to provide substantial coverage for inpatient hospitalization and physician services.

Although the proposed regulations do not state what approach the agency will likely take in defining “substantial coverage,” the IRS has requested comments on potential rules for determining substantial coverage by November 2, 2015.

SEPTEMBER 2015