



## Health Care Reform **Bulletin**

# IRS Closes Minimum Value Loophole for Low-cost Employer Plans

Provided by Clarke & Company Benefits, LLC

### Quick Facts

- IRS Notice 2014-69 clarifies that plans excluding coverage for in-patient hospitalization or physician services do not provide minimum value.
- **These plans should not be adopted for 2015.**
- The MV Calculator cannot be used to demonstrate minimum value of these plans, beginning in 2015.
- Transition relief is available for some plans.

Notice 2014-69 clarifies that plans that do not provide in-patient hospitalization services do not provide minimum value under the ACA, regardless of the results of the MV Calculator.

Under the Affordable Care Act (ACA), **minimum value (MV)** of an employer-sponsored plan is significant for a number of purposes. Beginning in 2015, certain large employers may be penalized if the health plan they offer does not provide MV. Also, an individual who is offered employer-sponsored coverage that is affordable and provides MV may not receive a subsidy for coverage through an Exchange. The Department of Health and Human Services (HHS) and the Internal Revenue Service (IRS) have provided four methods for determining MV of a plan, including an online [MV Calculator](#).

On Nov. 4, 2014, the IRS issued [Notice 2014-69](#) to clarify that **plans that do not provide in-patient hospitalization or physician services (referred to as Non-Hospital/Non-Physician Services Plans) do not provide the MV intended by the ACA.** HHS and the IRS will issue proposed regulations shortly, clarifying that a plan will not provide MV if it excludes substantial coverage for in-patient hospitalization services or physician services (or both).

Accordingly, under the regulations, **an employer will not be permitted to use the MV Calculator (or any actuarial certification or valuation) to demonstrate that a Non-Hospital/Non-Physician Services Plan provides MV.** As a

result, the IRS asserts that **a Non-Hospital/Non-Physician Services Plan should not be adopted for the 2015 plan year.**

However, Notice 2014-69 provides transition relief for certain employers that adopted a Non-Hospital/Non-Physician Services Plan prior to Nov. 4, 2014 (Pre-Nov. 4, 2014, Non-Hospital/Non-Physician Services Plans).

### Minimum Value

Under the ACA, a plan fails to provide MV if the plan's share of total allowed costs of benefits provided under the plan is **less than 60 percent** of those costs. An employer may use one of four methods to determine if its health plan provides MV, including:

- The online [MV Calculator](#);
- A safe harbor checklist;
- An actuarial certification (for plans that are not compatible with those methods); or
- A metal level determination (for plans in the small group market).

According to the IRS, certain group health plan benefit designs that do not provide coverage for in-patient hospitalization services are being



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offered to employers. Similarly, the IRS has become aware of unconventional plan designs that exclude substantial coverage of physician services. The IRS refers to these plans as Non-Hospital/Non-Physician Services Plans. Promoters of these plans contend that the plans satisfy MV, as determined through use of the online MV Calculator.

Questions have been raised as to whether Non-Hospital/Non-Physician Services Plans should satisfy the requirements for providing MV. In addition, the IRS notes that certain effects resulting from excluding substantial coverage of in-patient hospitalization services or physician services may not be adequately taken into account by the MV Calculator and its underlying continuance tables.

As a result, the IRS is concerned about the possibility of using the MV calculator to demonstrate that an unconventional plan design that excludes substantial coverage of in-patient hospitalization services or physician services provides MV.

#### **Notice 2014-69**

In Notice 2014-69, the Departments clarify that **Non-Hospital/Non-Physician Services Plans do not provide the MV intended under the ACA.** HHS and the IRS will issue proposed regulations shortly, clarifying that a plan will not provide MV if it excludes substantial coverage for in-patient hospitalization services or physician services (or both).

Accordingly, under the HHS and IRS regulations, **an employer will not be permitted to use the MV Calculator (or any actuarial certification or valuation) to demonstrate that a Non-Hospital/Non-Physician Services Plan provides MV.** The IRS advises employers to consider the consequences of the inability to rely solely on the MV Calculator (or any actuarial certification or valuation) to demonstrate that a Non-Hospital/Non-Physician Services Plan provides MV for any portion of any taxable year ending on or after Jan. 1, 2015, that follows finalization of the regulations.

#### **Future Regulations**

The proposed regulations are expected to be finalized in 2015. The Departments anticipate that the final regulations will apply to plans on the date they become final, rather than being delayed to the end of 2015 or the end of the 2015 plan year.

As a result, a **Non-Hospital/Non-Physician Services Plan (other than a Pre-Nov. 4, 2014, Non-Hospital/Non-Physician Services Plan) should not be adopted for the 2015 plan year.**

#### **Transition Relief**

Notice 2014-69 provides transition relief for employers that have entered into a binding written commitment to adopt, or have begun enrolling employees in, a Non-Hospital/Non-Physician Services Plan prior to Nov. 4, 2014, based on the employer's reliance on the results of use of the MV Calculator (referred to as a Pre-Nov. 4, 2014, Non-Hospital/Non-Physician Services Plan).

Solely in these situations, the Departments anticipate that final regulations, when issued, **will not apply to the plan before the end of the plan year (as in effect under the terms of the plan on Nov. 3, 2014), if that plan year begins no later than March 1, 2015.**

#### **Exchange Subsidy Eligibility**

Pending issuance of final regulations, an employee who is covered under a Non-Hospital/Non-Physician Services Plan will not be treated as having been offered MV coverage for purposes of eligibility for an Exchange subsidy. This is the case regardless of whether the plan is a Pre-Nov. 4, 2014, Non-Hospital/Non-Physician Services Plan.

#### **Employer Disclosure Requirements**

An employer that offers a Non-Hospital/Non-Physician Services Plan (including a Pre-Nov. 4, 2014, Non-Hospital/Non-Physician Services Plan) to an employee **must not state or imply in any disclosure that the offer of coverage under the Non-Hospital/Non-Physician Services Plan precludes an employee from obtaining a premium tax credit, if otherwise eligible.**



In addition, the employer must **correct, in a timely manner, any prior disclosures** that stated or implied that the offer of the Non-Hospital/Non-Physician Services Plan would preclude an otherwise tax-credit-eligible employee from obtaining a premium tax credit. Without this corrective disclosure, a statement (for example, in a summary of benefits and coverage) that a Non-Hospital/Non-Physician Services Plan provides MV will be considered to imply that the offer of such a plan precludes employees from obtaining a premium tax credit.

However, an employer that also offers to an employee another plan that is not a Non-Hospital/Non-Physician Services Plan and that is affordable and provides MV may advise the employee that the offer of this other plan will (or may) preclude the employee from obtaining a premium tax credit.

