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HHS Minimum Value Calculator Released

On Feb. 25, 2013, in connection with the final rule on essential health benefits, the Department of Health and Human Services (HHS) released its Minimum Value Calculator (MV Calculator).

Beginning in 2014, in order to avoid penalties under the Affordable Care Act (ACA), large employers must provide health coverage to their full-time employees (and dependents) that is affordable and provides minimum value. The MV Calculator's purpose is to assist in determining if an employer's health coverage provides the required minimum value.

The MV Calculator permits an employer to enter information about its health plan's benefits, coverage of services and cost-

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Proposed Rule Issued on 90-day Waiting Period Limit

On March 21, 2013, a proposed rule was issued on ACA's 90-day waiting period limit. The limit will prohibit group health plans and issuers from applying waiting periods that exceed 90 days. This limit applies to both non-grandfathered and grandfathered plans, and is effective for plan years beginning in 2014.

A waiting period is the amount of time that must pass before coverage for an employee or dependent who is otherwise eligible to enroll in the plan becomes effective. An employee or dependent is considered eligible when he or she has met the plan's eligibility conditions, such as being in an eligible job classification or achieving job-related licensure requirements.

It is important to note that if a plan allows an employee to elect coverage that would begin on a date that does not exceed the 90-day waiting period limit, ACA's 90-day waiting period limit is considered satisfied, even if an employee takes additional time to elect coverage.

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90-day Waiting Period (cont. from page 1)

Eligibility conditions based solely on the lapse of time are permissible for no more than 90 days. Other conditions for eligibility will still be allowed under ACA, as long as they are not intended to avoid compliance with the 90-day limit. One example of a permissible condition is a cumulative hours of service requirement, although some restrictions apply.

The proposed rule clarifies the method for counting days when applying a 90-day waiting period. The waiting period may not extend beyond 90 days and all calendar days must be counted beginning on the enrollment date, including the enrollment date itself, as well as weekends and holidays.

If the 91st day falls on a weekend or holiday, the plan or issuer may choose to make coverage effective earlier than the 91st day for administrative convenience, but cannot make the coverage effective date later than the 91st day.

For individuals who are in a waiting period for coverage when the ACA requirement becomes effective, the waiting period can no longer apply to the individual if it would exceed 90 days.

In addition, on Jan. 2, 2013, the Internal Revenue Service (IRS) issued proposed regulations addressing ACA's shared responsibility provisions. Under these rules, if an employee is reasonably expected at his or her start date to work full time, the employer must offer coverage to the employee at or before the end of the employee's first three calendar months of employment. If it does so, the employer will not be subject to a shared responsibility penalty for not offering coverage during the initial three months.

Filing Whistleblower Complaints

The ACA includes whistleblower protections for employees, protecting them from retaliation for reporting alleged violations of Title I of the ACA. Employees are also protected from retaliation for receiving a federal health insurance income tax credit or a cost-sharing reduction when enrolling in a qualified health plan.

On Feb. 27, OSHA's interim final rule governing ACA whistleblower complaints became effective. Comments on the rule may be submitted until April 29, 2013. The following is a summary of the rule.

An employer may not discharge or in any manner retaliate against an employee because he or she:

- Provided information relating to any violation or perceived violation of Title I of the ACA
- Testified, assisted or participated in a proceeding concerning a violation of Title I of the ACA (or is about to do so)
- Objected to, or refused to, participate in any activity that he or she reasonably believed to be in violation of Title I of the ACA
- Received a credit under section 36B of the Internal Revenue Code of 1986 or a cost-sharing reduction under section 1402 of the ACA for health coverage purchased through an Affordable Health Insurance Exchange

In addition, an employer may not take unfavorable employment action against an employee (such as firing, laying off or demoting) based on the employee's protected activity.

If an employer takes retaliatory action against an employee for engaging in any of these protected activities, the employee can file a complaint with OSHA within 180 days of the alleged ACA violation.

Health Plan Cost-sharing Limits

On Feb. 20, HHS issued a final rule on essential health benefits that addresses ACA's cost-sharing limits for health plans. The cost-sharing limits include both an overall limit, or an out-of-pocket maximum, and an annual deductible limit, both of which will become effective in 2014.

Grandfathered plans are not subject to ACA's cost-sharing limits. In addition, the final rule clarifies that:

- The annual deductible limit applies only to health plans offered in the insured small group market, meaning it does not apply to self-insured or large group market plans
- The out-of-pocket maximum applies to all non-grandfathered health plans, including self-insured health plans and insured health plans of any size

Other clarifications made in the final rule include:

- For plans using provider networks, an enrollee's cost-sharing for out-of-network benefits does not count toward the annual deductible or cost-sharing limit.
- HHS has determined that the deductible limits may not be increased for amounts available under FSAs. However, HHS has stated it will revisit this policy in later years. ACA does not provide for HRA or HSA contributions to affect the deductible limit.
- A health plan's annual deductible may exceed the ACA limit if a plan could not reasonably reach the actuarial value of a given level of coverage without exceeding the limit.

Final Minimum Value Calculator Released (cont. from page 1)

sharing terms to determine whether the plan provides minimum value.

According to HHS, the calculator is available for "informal external testing," and users are encouraged to notify HHS of technical or operational issues. If necessary, the calculator will be revised based on feedback.

Please contact Brown & Brown Consulting for more information.

The information contained in this newsletter is not intended as legal or medical advice.

Please consult a professional for more information.

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