

# Notices Issued Requesting Comments on Minimum Value and Reporting Provisions

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The IRS recently issued three notices that provide helpful insight as to how the IRS is addressing a variety of issues under the Affordable Care Act. These notices request comments on determining the minimum value of an employer-sponsored plan, reporting of minimum essential coverage and reporting by large employers on health insurance coverage. It is important to note that the information contained in these notices is not final or binding and there are no imminent compliance obligations as a result of this guidance. The notices are discussed briefly below.

## Minimum Value of an Employer-Sponsored Plan

Beginning in 2014, under the Affordable Care Act, the employer mandate provides that employers who employ an average of at least 50 full-time employees on business days during the preceding calendar year may be subject to a penalty if one full-time employee receives a premium tax-credit or cost-sharing subsidy to purchase Exchange-based coverage and (a) the employer either did not offer health coverage to full-time employees and their dependents, or (b) the employer did offer coverage but the coverage does not provide a minimum value or is unaffordable. To avoid this penalty, large employers must offer health coverage that provides a minimum value (covers 60% of total allowed costs) and is affordable. We are still awaiting guidance on what constitutes “minimum value.”

The IRS recently issued Notice 2012-31, which describes several possible approaches to determining the minimum value requirement and requests comments on such approaches. The approaches being considered are as follows:

- A minimum value calculator, which 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 a minimum value.
- Design-based safe harbors, in the form of checklists that would provide a simple, straightforward way to ascertain that employer-sponsored coverage satisfies the minimum value requirement without the need to perform any calculations or hire an actuary.
- For plans with non-standard features, an actuarial certification would be required. The plan could either use the minimum value calculator to generate an initial value and then engage an actuary to make appropriate adjustments that take into account the non-standard features, or the plan could engage an actuary to determine the plan’s actuarial value without the use of a calculator.

Plans would have to offer at least four categories of benefits to use the minimum value calculator or a safe harbor checklist: physician and mid-level practitioner care, hospital and emergency room services, pharmacy benefits and laboratory and imaging services. The guidance also indicates that employer contributions to an HSA or HRA may be included when determining minimum value.

## Reporting on Minimum Essential Coverage

Under the Affordable Care Act, insurance carriers, employers with self-insured plans, government agencies administering government health plan coverage, and any other entity that provides minimum essential coverage are required to file annual returns reporting information for each individual for whom such coverage is provided. Notice 2012-32 addresses this requirement. The reporting must reflect health care coverage provided on or after January 1, 2014; thus, the first returns will be filed in 2015. The carrier will likely be responsible for reporting for fully-insured plans, and employers responsible for self-insured plans. Among other things, the reports must contain information regarding the name, address and tax ID of the primary insured and other individuals covered under the plan, the dates each individual was covered during the calendar year, and whether the coverage is a qualified plan offered through an Exchange, together with any amount of advance payment of the premium tax credit or cost sharing reduction. For fully-insured plans, information concerning the employer, and the portion of premium paid by the employer must also be included. Entities filing this return must also furnish a written statement to each individual listed in that return that shows the information reported to the IRS for that individual.

## Reporting by Large Employers on Health Insurance Coverage

Every large employer that is subject to the employer mandate must report to the IRS the terms and conditions of the health care coverage provided to the employer's full-time employees for the year. Notice 2012-33 indicates that this return must also include information on the employer's full-time employees, including who received coverage and when they received it, as well as information about waiting periods, premium and other information required by the Secretary of the Treasury. This report will be used to verify employer-sponsored coverage and to administer the employer penalty under the mandate. Again, this reporting will reflect health care coverage provided on or after January 1, 2014, so the first returns will be filed in 2015.

Future regulations may permit a large employer to contract with the insurance carrier to provide this reporting to the IRS, but the employer will likely be responsible for reporting for self-insured plans. In addition to the report to the IRS, each full-time employee whose information is required to be reported must be provided a written statement by the employer that includes the employer's name and address, contact information and the information relating to coverage provided to that employee (and dependents) that is required to be reported on the return.