

# CLIENT ACTION Bulletin

Employee Benefits

## ACA Guidance: DOL Notices, IRS Minimum Value and Premium Tax Credits

**SUMMARY** The federal agencies with health reform regulatory oversight continue to publish guidance to implement provisions of the Affordable Care Act (ACA). On May 8, the Department of Labor (DOL) issued *Technical Release No. 2013-02*, which provides guidance and model notices for an employer to notify employees of health coverage options through the health insurance exchanges, or marketplace, beginning in 2014. The guidance also revises COBRA healthcare continuation coverage election notices to reflect the alternatives offered through the exchanges. The guidance will remain in effect until the DOL publishes updated information.

On May 3, meanwhile, the IRS proposed rules on the minimum value (MV) of employer-sponsored health plans and other requirements relating to the premium tax credits for qualifying individuals who purchase insurance on the exchanges. Plan sponsors may rely on the proposed rules, but the IRS proposes to apply final rules to taxable years beginning after Dec. 31, 2013.

### DISCUSSION **DOL Technical Release on Notices**

The ACA requires all employers subject to the Fair Labor Standards Act to notify employees about the exchanges' healthcare coverage options beginning on Oct. 1. New hires must be notified within 14 days of their start date; current employees by Oct. 1, 2013. All employees – both full- and part-time and regardless of their eligibility for the employer's plan – must be notified; dependents need not be notified.

Employers may develop their own notices but must satisfy certain content requirements. If the employer does not use the DOL model(s), custom notices must contain information regarding the existence of the exchanges, contact information, a description of the exchange services, and a statement that the employees may be eligible for a premium tax credit if they purchase a qualified health plan through the exchange and that they may lose tax-favored employer contributions to the health plan if they purchase an exchange plan. The notice must be written in a manner understood by the average employee and may be provided either by first class mail, or electronically if the DOL's electronic disclosure safe harbor rules are met. An individual will use the notice to enable the exchange to determine the individual's eligibility for premium tax credit and/or employer's shared responsibility penalty.

The DOL's model notices provide a brief description of the exchanges, the circumstances under which an employee may be eligible for a premium tax credit, and sources of additional information (including the employer contact information, if appropriate).

- **For employers that do not offer a health plan to employees**, the model notice includes a statement that the employee is not eligible for employer-sponsored coverage.
- **For employers that offer a health plan to some or all employees**, the model notice additionally includes specific information – to be supplied by the employer – about the health plan, such as who is eligible, whether the plan meets the MV standard, and whether the coverage is intended to be affordable, based on the employee's wages. This model notice also includes an *optional* section that the DOL indicates will help to ensure that employees better understand their coverage options.

The DOL's updated COBRA election notice – which a group health plan sponsor may use to provide qualified beneficiaries the required information about their rights to continuation coverage and how to make an election – newly includes information about alternate health coverage and premium tax credits that may be available through the exchanges, special enrollment opportunities for qualified beneficiaries within 30 days of coverage ending, and limitations on a plan's preexisting exclusions beginning in 2014. The revised notice eliminates irrelevant information as a result of the new exchanges, as well as removes references to certain tax credits that are scheduled to expire at the end of 2013.

## IRS Proposed Rules on Minimum Value and Premium Assistance

The IRS's proposed rules on MV and premium tax credits provide guidance for employers to determine whether the healthcare coverage they offer to employees provides an appropriate level of benefits so that penalties will not be triggered. Under the ACA, employers face penalties if an employee obtains subsidized coverage when purchasing insurance from the exchange and if either the coverage offered to most full-time employees does not satisfy at least a 60% MV standard or the cost of coverage to the employee is not affordable for the employee (i.e., the cost exceeds 9.5% of household income). Key areas addressed by the proposed rules include:

- **Minimum Value** – All nongrandfathered plans must meet the MV 60% actuarial value level as of the 2014 plan year. The proposed rules provide that MV is based on anticipated spending for a standard population for benefits provided under any particular essential health benefits (EHB) benchmark plan for a state.
- **HRAs and HSAs** – All employer contributions to an employee's health savings account (HSA) for the current plan year are taken into account for MV and will be treated as amounts available for first dollar coverage in determining a plan's cost share. In addition, the proposed rules provide that all amounts made available under a health reimbursement arrangement (HRA) for the current plan year and integrated with an eligible employer-sponsored plan will count towards MV if the amounts may be used for cost sharing and not to pay insurance premiums.
- **Wellness Programs** – A plan's share of costs only for nondiscriminatory wellness programs that are designed to prevent or reduce tobacco use will count towards MV, based on an assumption that every eligible individual satisfies the terms of the program consistent with ACA provisions that allow for higher premiums based on tobacco use. The affordability of an employer-sponsored plan will be determined in the same manner.

Under a transition rule applicable to plan years beginning prior to Jan. 1, 2015, an employer will not be assessed a penalty for any employee who received a premium tax credit if the plan would have met MV and affordability based on an employee satisfying the terms of *any wellness program – including those unrelated to tobacco use* – only if the reward is expressed as a dollar amount or a fraction of the total employee premium. The program also must have been in effect on May 3, 2013, and only for employees in a category of employees that were eligible for the wellness program on that date irrespective of whether they were hired before or after that date.

### Minimum Value Safe-Harbor Designs

Under the proposed rules, the following safe harbor plan designs will satisfy the MV requirements:

- A plan with a \$3,500 integrated medical and drug deductible, 80% plan cost sharing, and a \$6,000 maximum out-of-pocket limit for employee cost sharing.
- A plan with a \$4,500 integrated medical and drug deductible, 70% plan cost sharing, a \$6,400 maximum out-of-pocket limit, and a \$500 employer contribution to an HSA.
- A plan with a \$3,500 medical deductible, \$0 drug deductible, 60% plan medical expense cost sharing, 75% plan drug cost sharing, a \$6,400 maximum out-of-pocket limit, and drug copays of \$10/\$20/\$50 for the first/second/third prescription drug tiers, with 75% coinsurance for specialty drugs.

The proposed safe harbor designs are in addition to the current permitted methods of actuarial certification and the use of the IRS/Department of Health and Human Services MV calculator.

## ACTION

Employers should review the DOL's model language for employee notification and determine whether to use the models or to prepare their own applicable notices. Use of the models may be more convenient and less costly, given the upcoming Oct. 1 deadline. Administrative systems also should be reviewed to ensure that the communications will be transmitted in accordance with the notification requirements. Employers also should review the IRS's proposed rules for the likely effects on, and the implications for, the group health plan offerings. Concerns about or suggestions for improvements to the proposed rules should be submitted to the IRS by the July 2, 2013 comment deadline.

For additional information about the DOL's guidance and notices or the IRS's proposed rules, please contact your Milliman consultant.