Stephens Insurance, LLC
111 Center Street
Little Rock, Arkansas 72201
(800) 852-5053
http://www.stephensinsurance.com

IRS PROPOSES METHODS FOR VALUING EMPLOYER HEALTH COVERAGE

The IRS has just issued three notices concerning key aspects of the 2010 Affordable Care Act (ACA). Notice 2012-31 proposes three different methods by which sponsors of self-funded health plans could value the coverage they provide to plan participants and their dependents. Notice 2012-32 and Notice 2012-33 then solicit comments on two related employer reporting requirements.

This process for valuing and reporting employer health coverage goes to the heart of the ACA's individual and employer mandates. It will also help target a tax credit designed to help low-income individuals pay premiums for health insurance purchased through a state-wide insurance exchange.

"Minimum Essential Coverage" Versus "Essential Health Benefits"

The "individual mandate" (the constitutionality of which is now under review by the U. S. Supreme Court) refers to the ACA requirement that most U.S. citizens either have "minimum essential coverage" or pay a penalty on their federal income tax return. The emphasis here is on "minimum." This requirement may be satisfied through virtually any type of health coverage - individual or group, private or governmental, generous or stingy.

Minimum essential coverage should be contrasted with "essential health benefits," another ACA-created term. This refers to the type of *comprehensive* health coverage that must be offered by any insurer whose individual or small-group policy is sold through an exchange. Essential health benefits must include at least a benchmark level of coverage for each of ten specific categories of benefits. Notice 2012-31 makes clear that self-funded employer health plans (as well as insured plans maintained by larger employers) need *not* meet this higher standard.

New Employer Reporting Requirements

To help enforce the individual mandate, a new Section 6055 of the Tax Code will require all providers of minimum essential coverage to report to the IRS on the individuals who receive that coverage. In Notice 2012-32 the IRS indicates that final regulations under Section 6055 will likely make a health insurer responsible for reporting minimum essential coverage under any *insured* employer health plan, relieving the sponsoring employer of that obligation. In the case of a *self-funded* employer plan, however, this reporting obligation will fall on the employer. The IRS anticipates that this Section 6055 reporting would be done on an employee's Form W-2.

A separate reporting requirement will apply only to "large employers" (generally defined as those having 50 or more full-time employees). Under Code Section 6056, a large employer must report the information needed to administer two other provisions of the ACA. These are (1) a premium tax credit available to low-income individuals for the purchase of health insurance through an exchange, and (2) the "shared responsibility" penalty to be assessed against large employers that fail to offer health coverage meeting a "minimum value" standard, or that offer such coverage but charge a premium that is not "affordable." Notice 2012-33 solicits comments on this Section 6056 reporting requirement.

Importance of "Minimum Value" Determination

Under the ACA, an employer plan *fails* to provide "minimum value" if "the plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs." Citing a fall 2011 report by the Department of Health and Human Services (HHS), the IRS notes that approximately 98% of the individuals currently covered by employer-sponsored health plans receive coverage that *meets* this minimum value standard.

This minimum value determination is important to both employees and large employers. An employee may not claim the premium tax credit for the purchase of health insurance through an exchange if the employee (or a family member) is eligible to enroll in an employer-sponsored health plan that meets this minimum value standard - unless the premium for that coverage is not "affordable" (a determination to be made on the basis of the employee's household income). This premium tax credit is also unavailable to any employee who is actually *enrolled* in an employer plan - even if that plan fails to provide minimum value or is not affordable.

If any full-time employee of a large employer receives this premium tax credit - either because the employer plan fails to provide minimum value or because it charges a premium that is not affordable - that employer may be assessed a "shared responsibility" penalty. As explained in our May 2011 article, the formula used in calculating the *amount* of this penalty will depend on whether the "minimum value" standard has been met. For this reason, large employers will need to value the coverage provided through their plans.

Proposed Valuation Methods

In Notice 2012-31, the IRS proposes the following three valuation methods:

- MV Calculator. HHS intends to develop a minimum value (MV) calculator that would allow sponsors of self-funded health plans to input a limited set of information on the benefits offered under a plan, including specified cost-sharing features such as deductibles, co-insurance, and out-of-pocket maximums. The IRS expects that this information would be required for the following four "core" categories of benefits: physician and mid-level practitioner care, hospital and emergency room services, pharmacy benefits, and laboratory and imaging services. According to the fall 2011 HHS report, these four categories of benefits are the greatest contributors to a health plan's value.
- Safe-Harbor Checklists. Rather than using the MV calculator, an employer whose plan provides benefits in all four of the core categories described above could rely on any of several "safe-harbor checklists" to be developed by HHS and the IRS. Each such checklist would describe the cost-sharing attributes applicable to each of the four core categories of benefits. An employer-sponsored plan would be treated as providing minimum value if its cost-sharing attributes are at least as generous as those shown in any of the safe-harbor checklists.
- Actuarial Certification. Plans with "nonstandard" features, such as quantitative limits on any of the core benefits (e.g., a limit on the number of physician visits or covered hospital days), could *start* by using the MV calculator and then have a certified actuary make the valuation adjustments needed to reflect the nonstandard features. In certain cases, an employer would even have the option of engaging a certified actuary to make the entire calculation.

Under any of these three valuation methods, an employer could take into account any of its current-year contributions to an employee's health savings account, or any amounts first made available during the year under a health reimbursement arrangement. Doing so should make it easier for the employer's comprehensive health plan to satisfy the minimum value standard.

Requests for Comments

All three of these Notices solicit comments. Unfortunately, the deadline for submitting those comments is June 11, 2012. This is likely to be *before* the Supreme Court has issued its ruling on the constitutionality of the individual mandate - and perhaps the entire ACA.

Kenneth A. Mason, Associate
Spencer Fane Britt & Browne LLP