American Heart Association | American Stroke Association

June 11, 2012

Internal Revenue Service
Cc: PA:LPD: PR (Notice 2012-31)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Submitted electronically via Notice.Comments@IRScounsel.treas.gov

RE: Notice 2012-31, Minimum Value of an Employer-Sponsored Health Plan

Dear Sir or Madam:

On behalf of the American Heart Association (AHA), including its American Stroke Association (ASA) division, and more than 22 million volunteers and supporters, we appreciate the opportunity to offer our comments on key issues related to determining whether an employer-sponsored health plan provides minimum value, as provided for under the Patient Protection and Affordable Care Act (ACA).

The ACA is intended to increase access to affordable, comprehensive health coverage, a goal that the AHA/ASA strongly supports. Under the law, employees, or members of an employee's family, are not eligible for premium tax credits to purchase health insurance through a state-based health insurance exchange unless the coverage offered by their employer is either unaffordable or does not provide minimum value. To satisfy the minimum value requirement, a plan must have an actuarial value of at least 60 percent. It is important that the methods for calculating minimum value not understate the value of an employer plan because the consequences for workers and their families are significant – potentially preventing them from accessing more affordable and comprehensive coverage with greater consumer protections through the insurance exchanges.

Treasury specifically invited comment on how minimum value calculations could be adjusted to take into consideration specific types of benefits, such as wellness benefits, that may be provided by employers. Our comments will focus solely on issues related to the types of benefits that should and should not be counted when determining minimum value, not on other aspects of the Notice. In general, employers offer many benefits that may be of value to their workers, but those that are not medical benefits should not be included in the minimum value calculation. In the following pages, we provide detail on specific types of benefits that should specifically not be used to increase the minimum value calculation.

Wellness Programs
Wellness programs should not be used to increase the minimum value of a plan. The fundamental goal of any wellness program should be to provide opportunities for individuals to improve their health and wellness. A wellness program should not be

used in a way that threatens an employee's ability to maintain health insurance and any resulting decrease in access to care, which would be in direct conflict with the primary objective of improving employee health. This is especially important for low-income or blue collar employees who may have more barriers to participating in these programs and are more likely to have chronic conditions or poor health. The AHA supports comprehensive worksite wellness programs that engage all members of the workforce to improve employee health, and we maintain that these programs should not create unaffordable coverage or other barriers to access for employees. Because of these possibilities, it is important that any guidance does not allow employers to use wellness programs as a way to avoid offering coverage that meets minimum value requirements.

Some wellness programs offer additional benefits, such as discounted or free gym memberships, weight loss program memberships, healthy food offered in the work place, entrance fees to races, health fairs, or incentives such as gift cards or raffles to employees that participate in program health risk assessments or meet certain goals such as exercise, weight loss or smoking cessation. While such benefits can be positive for both the employer and the employee, they are not health coverage and should not be allowed to be included in the minimum value calculation.

Other wellness programs offer incentives or penalties based on activities or health status that impact the premium or cost-sharing design of a plan. For example, a plan may have a $1,000 deductible, but provide incentives that can reduce the deductible to $500. Alternatively, a plan may have a $500 deductible, but provide penalties that can raise the deductible to $1,000. If employers do take this approach, Treasury should require that the minimum value be calculated assuming the plan has a $1,000 deductible. This is the only way to maintain equity and ensure that employees are not being prevented from accessing affordable coverage while only being given access to a plan that has a minimum value lower than 60%.

In summary, we recommend that (1) wellness programs that have no impact on cost-sharing, such as gym memberships or health fairs, have no impact on the minimum value calculation and that (2) the highest possible cost-sharing that an employee could pay under a wellness program that uses incentives or penalties in the plan design be used when calculating minimum value.

Medical Services Required for a Job
Medical services required by the employer for performance of the job or benefit of the employer should not be included in the calculation. These are employer requirements, not employee benefits. The types of medical services could include, but are not limited to: drug testing, a mandatory physical exam, a test of physical capabilities such as an eye exam or endurance test, or services related to workers compensation. These services may be provided onsite by the employer, at a clinic operated by the employer, by a provider contracting with the employer, or at a specified provider's office. The services may be paid directly by the employer or reimbursed by the employer.

Excepted Benefits
Excepted benefits should also not be included in the minimum value calculation. Excepted benefits are benefits that are not health benefits or are, in one of the ways detailed in IRC 9832(c), offered separately or not in coordination with the health plan. This means the benefits are not part of the core health benefits of the plan and should therefore not be part of the calculation. Examples of excepted benefits include, but are not limited to, stand-alone dental or vision benefits, disability income benefits, long-term care coverage, and workers compensation benefits. In addition, these benefits are exempted from many employee protections, including regulation by the ACA and are specifically excluded from being minimum essential benefits (ACA §1502(f)(3)). The specific exclusion under the ACA shows clear Congressional intent that excepted benefits are not part of

the employer's coverage to be calculated towards minimum value. If these benefits were allowed to be calculated as part of minimum value, it could result in situations in which employees are denied access to affordable coverage in the insurance exchange because of an offer of coverage with minimal protections.

Counting Essential Health Benefits
As the Notice states, employer-sponsored self-insured plans and insured large group plans are not required to offer all of the Essential Health Benefits (EHB) or even to cover each of the 10 statutory EHB categories. When determining what benefits count toward the "total allowed costs of benefits provided under the plan," we support the policy proposed in the Notice that would allow all benefits provided by the plan that are included in any of the EHB benchmarks to be taken into account. Our interpretation of this policy is that any medical benefits that fall within the categories of essential health benefits and are covered by any of the potential EHB benchmark plans can be included in the minimum value calculation. We believe this policy provides the desired flexibility to employers while also ensuring that only *bona fide* medical benefits are counted. This will help to further ensure that other benefits, similar to the examples highlighted earlier in this letter that was not intended to be an exhaustive list, are not used to inappropriately inflate an employer's minimum value calculation.

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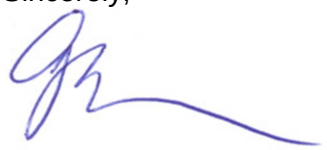
Thank you again for the opportunity to share our comments on these issues related to the calculation of minimum value for employer-sponsored health plans. If you have any questions, please feel free to contact Stephanie Mohl, Government Relations Manager, at Stephanie.Mohl@heart.org or 202-785-7909.

Sincerely,



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