HHS issues final rule closing ACA minimum value health plan loophole

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The Department of Health and Human Services says once and for all it will not qualify employer-sponsored health plans that fail to cover inpatient hospitalization as meeting the minimum value health plan standard under the Affordable Care Act.

In a final rule published today in the Federal Register, HHS says in order to qualify as a minimum value plan under the ACA, an employer plan must provide substantial coverage of both inpatient hospital services and physician services.

“We have concluded that plans that omit these types of coverage fail to meet universally accepted minimum standards of value expected from, and inherent in the nature of, any arrangement that can reasonably be called a health plan intended to provide the primary health coverage for employees,” the final rule states.

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Promoters of the plans had argued they satisfy the 60% actuarial value definition of minimum value within the meaning of the ACA as determined through use of an online minimum value calculator released by the HHS.

“The allure of these plans to some employers was that they could offer the plans at relatively inexpensive price points and insulate themselves from potential penalties under both prongs of the employer mandate,” Edward Fensholt, director of compliance services for Kansas City, Mo,-based Lockton Benefits Group.Fensholt says in a legal alert on the subject.

The plans were also widely received by low-income workers in relatively good health that didn’t want to pay for inpatient coverage they may never use, Mitchell Besvinick, president of Innobenefits told attendees of the Workplace Benefits Renaissance in Atlantic City this week.

HHS, however, says “allowing these designs to be treated as providing minimum value not only would allow an employer to avoid the shared responsibility payment that the statute imposes when an employer does not offer its full-time employees adequate health coverage, but would adversely affect employees (particularly those with significant health risks) who understandably would find this coverage unacceptable, by denying them access to a premium tax credit for individual coverage purchased through an exchange.”

“Plans that omit critical benefits used disproportionately by individuals in poor health will enroll far fewer of these individuals, effectively driving down employer costs at the expense of those who, because of their individual health status are discouraged from enrolling,” the agency says in its final rule.

The publishing of the final rule triggers a 60-day timeframe, at the end of which, minimum value plans without “substantial inpatient benefits will be out of compliance,” says Carlo Mulvenna, vice president of domestic group business at Pan-American Life Insurance Group.

The rule becomes effective April 28, 2014.

Transition relief

The Obama administration will be offering some transitional relief, however, Mulvenna told attendees of Workplace Benefits Renaissance.

For employers that, as of Nov. 3, 2014, had already enrolled or begun to enroll employees in one of these stripped down health care plans, the Internal Revenue Service will forgive employer mandate tax penalties through the plan year that begins on or before March 1, 2015. Employees of companies offering such plans will also not be excluded from qualifying for premium tax credits this year.