



June 24, 2013

CC:PA:LPD:PR (REG-125398-12)
Internal Revenue Service
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Attention: Minimum Value of Eligible Employer-Sponsored Plans

Submitted online at www.regulations.gov

To Whom it May Concern:

The National Business Coalition on Health (NBCH) appreciates the opportunity to provide comments on the proposed rule, Minimum Value of Eligible Employer-Sponsored Plans. We appreciate the important policy goal of the ACA in extending health insurance coverage as broadly as possible; employers have always played a leadership role in offering affordable health insurance to their employees and families and hope to continue to provide this valuable benefit.

The National Business Coalition on Health (NBCH) is a national non-profit membership organization of purchaser-led health care coalitions. NBCH and its members are dedicated to value-based purchasing of health care services through the collective action of public and private purchasers. NBCH seeks to accelerate the nation's progress towards safe, efficient, high-quality health care and the improved health status of the American population. NBCH has a membership of 54 coalitions across the United States representing over 7,000 employers and approximately 25 million employees and their dependents. These business coalitions are comprised of mostly mid- and large-sized employers in both the private and public sectors in a particular city, county, or region. NBCH member coalitions are committed to community health reform, including an improvement in the value of health care provided through employer-sponsored health plans and to the entire community.

NBCH and its members fully recognize the importance of health insurance coverage as an employee benefit; the vast majority of larger employers have voluntarily provided it for decades. Expanding participation in the health insurance market generally will, we believe, help address current dysfunctional elements of that market, particularly in the individual and small group markets. However,

employers are concerned that these new ACA requirements will be overly burdensome and complex, causing them to consider alternatives to offering traditional employer-sponsored health insurance. Such alternatives may include dropping coverage altogether, or seeking options that provide greater cost controls for employers, such as private health insurance exchanges.

President Obama's messaging on the ACA during the congressional debates was, "If you like the health insurance coverage you have, you get to keep it." There is a growing concern that this promise will not bear out under these regulations related to minimum value of employer-sponsored plans as they related to the broader employer shared responsibility provisions. We urge that an important litmus test for the final regulations be "do no harm" to the current system of employer-sponsored health insurance.

Treatment of Health Savings Accounts and Health Reimbursement Arrangements

The proposed regulation addresses how employer contributions to HRAs and HSAs are treated in determining minimum value and affordability. We thoroughly appreciate this clarification and support the policy decision made by the regulators and hope to see it retained in the final rule. Specifically, all amounts contributed by an employer to an HAS or HRA are taken into account in determining the plan's share of costs for purposes of minimum value and are treated as amounts available for first dollar coverage. As employers move toward consumer directed health plans and other variations of value-based insurance design, which aim to put more decision making control in the hands of employees, this is a welcome decision that will continue to encourage employers to move toward these plans. There is general consensus among employers and health policy experts that consumers need to have more "skin in the game" when it comes to health care if we are ever going to get health care costs under control. Allowing employers to count their contributions toward these types of savings and reimbursement accounts is a strong lever employers now have. As Mitch Daniels, former governor of Indiana, said recently, "We will never achieve cost containment until we are all cost containers."

Treatment of wellness incentives

We greatly appreciate that the proposed regulations provide guidance that addresses how wellness programs factor into an employer's determination of whether its plan provides minimum value, and if it is affordable. This has been a big question for employers, and we appreciate the clarity. Under the proposed rule, when determining a plan's share of costs for minimum value purposes, any reduced cost-sharing that is available under a wellness program is generally disregarded, with only one exception. For wellness programs designed to prevent tobacco use, a plan's minimum value may be calculated assuming every eligible individual satisfies the terms of the program relating to prevention or reduction of tobacco use. Similarly, the proposed regulations provide that for purposes of determining affordability of employer coverage, employers must assume that each employee fails to satisfy the requirements of a wellness program, except that an employer may assume that employees satisfy the requirements of a qualifying tobacco cessation program.

While we concede that there is a very strong evidence base for wellness programs focused on smoking cessation, and applaud the regulators for recognizing this, we are unclear of the rationale for including only wellness programs related to smoking cessation when making minimum value determinations. Employees who smoke, while definitely responsible for high employer health care costs, are a smaller proportion of an employer's population than they were even a few years ago. Employers in recent years have begun to develop robust and innovative wellness programs and incentive structures around weight

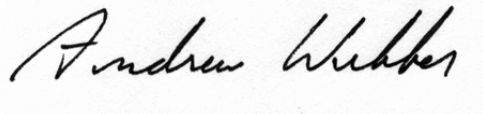
management in order to prevent health care costs associated with obesity. Why can't employers take these programs into consideration when making minimum value (and affordability) determinations?

Exchange interaction with employers

Employers are especially concerned about making accurate minimum value determinations because it is one of two critical elements (the other being affordability) that will determine whether an individual is eligible for a tax credit to purchase health insurance on an exchange, and therefore whether an employer will be subject to a \$3,000 shared responsibility payment. We appreciate that the Centers for Medicare and Medicaid Services have developed and made available a minimum value "calculator" and encourage the final regulation to reiterate that employers may rely on the use of this calculator when making minimum value determinations and communicating that information to employees. Employers would also welcome additional reassurance in the form of regulation text that provides a "good faith effort" safe harbor. If employers are doing their best to continue offering health insurance to employees that meets all of the additional requirements of the ACA, an inadvertent mistake in making these complex calculations should not subject employers to potential shared responsibility payment liability.

NBCH and its members appreciate your thoughtful consideration of these comments on the proposed regulations. If you have any questions about these comments or wish to discuss anything further, please contact Colleen Bruce, Director of Value-Based Purchasing and Public Policy at (202) 775-9300 or cbruce@nbch.org.

Sincerely,

A handwritten signature in black ink that reads "Andrew Webber". The signature is written in a cursive, flowing style.

Andrew Webber
President and CEO