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November 2, 2015

John Dalrymple  
Deputy Commissioner for Services and Enforcement  
Internal Revenue Service  
Ben Franklin Station, P.O. Box 7604  
Washington, DC 20044

***RE: Internal Revenue Service, CC:PA:LPD:PR(REG-143800-14), Minimum Value of Eligible Employer-Sponsored Health Plans, September 1, 2015 (Federal Register Vol. 80, No. 169).***

Dear Mr. Dalrymple:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, and our 43,000 individual members, the American Hospital Association (AHA) appreciates the opportunity to comment on the Internal Revenue Service's (IRS) supplemental notice of proposed rulemaking regarding the minimum value (MV) of eligible employer-sponsored health plans.

The supplemental notice withdraws a previous IRS proposed rule and replaces it with new guidance on how to determine whether health coverage under an employer-sponsored plan provides at least a MV of health benefits that includes hospital inpatient services. **The AHA supports IRS's action, through this supplemental notice, to further clarify that for health plans to meet this minimum standard they must provide substantial coverage for inpatient hospitalization and physician services.** Further, this supplemental notice is consistent with the Centers for Medicare & Medicaid Services' (CMS) final rule, published on February 27, 2015, that addressed the issue of MV.

Large employers, as a result of the Affordable Care Act (ACA), are required to offer their employees an affordable health plan that meets or exceeds the "MV threshold" of covering at least 60 percent of expected costs. For example, at 60 percent actuarial value, employers, through their health plan, would expect to pay 60 percent of the costs of care, and employees would pay 40 percent through premium, cost-sharing and deductibles. There are three ways to determine if a plan meets the MV requirements: a MV online calculator developed by the Department of Health and Human Services (HHS); a set of safe harbor benefits; and, in unusual circumstances, certification by a member of the American Academy of Actuaries.



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The Department of the Treasury is charged with enforcing the MV standard. If an employer fails to offer coverage that meets the MV standard, it must make a shared responsibility payment for each employee that is impacted. The HHS calculator, however, is the primary way plans determine if they meet the MV requirement. In addition, the ACA also directed HHS to establish a set of essential health benefits (EHB), including benefits for inpatient and outpatient hospital care; the law does not require employers with more than 50 employees to offer the full range of benefits. In 2014, some health plans that were approved by the online calculator – and therefore certified as meeting the ACA’s 60 percent standard – either excluded or had minimal inpatient hospital coverage. This resulted in employees who were offered calculator-approved plans, not being eligible to receive premium and cost-sharing subsidies in order to buy insurance through the health care marketplace.

Inpatient hospital coverage is critical to the health care continuum and is included specifically in the ACA’s definition of EHBs. As advocated by the AHA, CMS stopped the proliferation of these types of plans referenced above through the publication of their final rule. CMS’s final rule states that health plans must not only continue to meet the 60 percent actuarial value standard, but must also include “substantial coverage” for both inpatient hospital and physician services. CMS’s final rule, however, did not define the term “substantial,” and the AHA remains concerned. We will continue to advocate for a definition in both CMS and IRS rulemaking that ensures substantial inpatient hospital benefits.

The AHA also is disappointed that certain plans sold in 2014 that excluded inpatient benefits have remained in place throughout 2015. Employees of companies that offered such plans are at greater financial risk if they need inpatient hospital services during the 2015 plan year. **We supported CMS’s efforts to ensure that employees in these plans that did not include inpatient hospital and physician coverage have access to appropriate benefits and premium subsidies on the health insurance marketplaces.** We understand that plans without substantial inpatient hospital and physician services benefits sold before November 4, 2014 and in effect before March 1, 2015, will be allowed to remain. While this is less than adequate coverage under the ACA, we look forward to March 1, 2016, when these plans will no longer be allowed.

Thank you for your consideration of our comments. If you have any questions, please contact me or Molly Collins Offner, AHA director of policy, at (202) 626-2324 or [mcollins@aha.org](mailto:mcollins@aha.org).

Sincerely,

/s/

Thomas P. Nickels  
Executive Vice President