



Regulatory Update

Minimum Essential Coverage (MEC)/Skinny Plans

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Minimum essential coverage (MEC) plans have become synonymous with “skinny plans.” Yet virtually all employer-sponsored major medical plans satisfy the criteria for MEC under the ACA – not just skinny or limited medical plans. Most MEC plans are considered to provide minimum value under the ACA (i.e., at least a 60% actuarial value). However, in this issue brief, reference to “MEC plans” will refer to plans that do not provide minimum value. Although this latter category of MEC plans is more limited in the coverage provided, it is important to keep in mind that most group health plan statutes and regulations still apply to them in the same way as they do to more robust major medical plans.

Background

Most employer-sponsored group health plans will be considered MEC plans since there is very little guidance and few specific requirements are given. Even plans referred to as “limited medical,” “skinny plans,” or preventive-only will meet this requirement. The definition includes any coverage under an “eligible employer-sponsored plan”—a term that means a group health plan or group health insurance coverage offered by an employer to an employee that is (1) a governmental plan, or (2) any other plan or coverage offered in a state’s small or large group market. In addition, IRS regulations clarify that self-funded employer coverage qualifies as an eligible employer-sponsored plan.

§4980H (Employer Mandate) Implications

Providing MEC to at least 95% of an applicable large employer’s full-time employees will ensure that the employer is not required to pay an employer shared responsibility penalty for every full-time employee under §4980H(a). While employers are often required to pay 100% of the cost for MEC plans (i.e., no employee contributions), in almost all cases the employer’s cost of providing the MEC plan is significantly less than the potential penalty for not offering group health plan coverage as required under §4980H(a) – full-time employee count – 30 x \$2,570 (in 2020).

Although offering a MEC plan avoids a penalty under §4980H(a), offering MEC is not enough to protect an applicable large employer from all potential penalty liability under §4980H. To also avoid risk of penalties under §4980H (b), the coverage that the employer offers must be affordable and provide minimum value. The requirement to provide “minimum value”



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coverage is a higher standard than MEC. A plan provides minimum value if the plan's share of the total allowed cost of benefits provided to an employee is at least 60% (i.e., has an actuarial value of 60% or better). However, some applicable large employers have made the decision to ensure that they are not at risk of owing the much larger subsection (a) penalty by providing a MEC plan, while risking the possibility of owing penalties under subsection (b) for failing to provide minimum value. In some cases, the cost of providing a plan that would provide minimum value at an affordable price can far outweigh the potential subsection (b) penalties that could be assessed against the plan for failing to do so.

Employers who offer a MEC plan cannot require enrollment; they must allow eligible employees to waive, even if the employer is paying 100% of the cost (which is often the case). However, those employees who enroll in the MEC plan even though it does not provide minimum value are not eligible for a tax subsidy toward coverage through a public Exchange. For this reason, employers are not necessarily doing employees a favor by offering fully-paid MEC plans. We recommend that employers carefully communicate to employees the impact of such offerings on Exchange subsidy eligibility.

§6055 Reporting

MEC plans are generally self-funded, and therefore the employer is responsible for reporting coverage information for all individuals who enroll in the MEC plan. This is true for large and small employers, although a MEC plan is more likely to be offered by applicable large employers. Small employers report coverage information on Forms 1094-B and 1095-B; applicable large employers will typically report coverage information in Part III of Form 1095-C.

ACA Group Health Plan Mandates

Although a MEC plan does not provide minimum value and will not completely shield employers from all potential employer shared responsibility penalties, MEC plans are still considered group health plans under the ACA. Further, MEC plans are not considered "excepted benefits" like certain limited purpose vision or dental plans. In other words, the ACA insurance mandates, patient protections, documentation requirements, and other mandates still apply to MEC plans.

For example, MEC plans are still required to comply with the requirements to provide coverage up to age 26 for dependent children and preventive care with no cost-sharing, and to comply with lifetime and annual dollar limit requirements, among other requirements. Further, MEC plans are required to provide participants and beneficiaries with summaries of benefits and



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coverage (SBCs). Whether a plan provides minimum value is required information in the SBC; therefore, a MEC plan would need to disclose the fact that the plan does not provide minimum value in the SBC. This information can be vital to employees, since they may still be eligible for subsidized coverage through the exchange if they waive a MEC plan that does not provide minimum value.

ERISA & COBRA

MEC plans are considered group health plans under ERISA and COBRA. Therefore, all ERISA documentation and reporting requirements, including a formal plan document, summary plan description (SPD), and Form 5500 filing requirements, apply to MEC plans. Further, if a participant in a MEC plan experiences a COBRA qualifying event, and the employer has 20 or more employees, that qualified beneficiary should still be offered continuation coverage under the MEC plan.

HIPAA Special Enrollment

As discussed above, MEC plans are not considered excepted benefits for purposes of avoiding compliance with the requirements for a group health plan under the ACA. The same is true for the requirements under HIPAA Portability, and specifically HIPAA special enrollment requirements. In other words, if an employee (or an employee's eligible spouse or dependent) experiences a HIPAA special enrollment even if the employer is required to permit them to enroll in the MEC plan midyear outside of the open-enrollment period.

Nondiscrimination Rules for Self-Funded Group Health Plans

As self-funded group health plans, MEC plans are subject to §105(h) nondiscrimination rules, which restrict the ability to favor highly compensated individuals. However, given that most employers offer MEC plans broadly to at least all full-time employees, it's unlikely that §105(h) for most MEC plans.

Summary

For some employers, a MEC plan offering makes sense. For example, it may be an option for part-time employees who are not eligible for the employer's minimum value plan offering; or, for an applicable large employer who is not willing to provide an affordable minimum value



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plan, the MEC plan will at least provide protection from §4980H(a) penalties. Although MEC plans tend to be more limited in the coverage they provide, and therefore do not provide the same level of protection from potential penalties under §4980H, most group health plan statutes and regulations apply in the same way to MEC plans as they do to other employer-provided major medical plans.

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