

# ACA Alert: Be Wary Of 'Skinny' Health Insurance Plans For 2015

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So-called "skinny" or "bare bones" employer health plans generally do not provide coverage to employees for in-patient hospitalization services or physician services (or both). A plan that does not provide these services results in a lower cost plan with lower premiums as compared to a typical employer-sponsored group health plan.

For some employers, a "skinny" health insurance plan appears to be a cost-efficient alternative to providing minimum essential coverage for employees under the Patient Protection and Affordable Care Act ("ACA"). Do not be deceived: new guidance from the Department of Health and Human Services ("HHS") and the U.S. Department of the Treasury (including the Internal Revenue Service) (collectively, "Departments") indicates that "skinny" plans do not satisfy an employer's obligations under the ACA. Earlier this month, the Departments issued Notice 2014-69, closing the loophole on "skinny" plans, and giving notice to employers that "skinny" plans, in fact, do not meet minimum value standards under the ACA.

As a quick refresher, the ACA imposes a penalty on employers with 50 or more full-time or full-time equivalent employees who fail to offer health coverage to all full-time employees (and their dependents) and/or offer health coverage that is not affordable or fails to meet minimum value standards. A plan will provide minimum value if it covers at least 60% of the total costs of all benefits provided under the plan. The final regulations issued by HHS in February 2014 permitted the minimum value to be calculated using an on-line minimum value calculator.

The Departments became aware that "skinny" plan designs were being promoted to employers as meeting the minimum value standard of the ACA. Sponsors of "skinny" plans tell employers that "skinny" plans will nonetheless meet the minimum value standard as calculated by the on-line calculator, albeit barely. For example, some "skinny" plans may have a minimum value calculation of 59.5%, which meets the minimum value threshold of 60% only if rounded upward.

Notice 2014-69 states that a plan that excludes in-patient hospitalization services or physician services will not provide minimum value and that new rules will be issued soon to clarify this point.

Until such rules are released, employers are not permitted to use the on-line minimum value calculator to demonstrate that plans excluding in-patient hospitalization services or physician services provide minimum value. Most importantly, "skinny" plans should not be adopted for the 2015 plan year, unless the employer entered into a binding agreement to implement a "skinny" plan or started to enroll employees in a "skinny" plan prior to November 4, 2014.

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