

# LEGAL UPDATE



*The Benefit of Balance*

Date: June 6, 2013

In May, the Department of Labor published guidance on the Notice to Employees of Coverage Options. This notice must be sent to all employees, full-time and part-time, prior to October 1, 2013, by employers who are subject to the Fair Labor Standards Act. Two notices are available, one for employers who offer health care coverage and one for employers who do not. The notice may be distributed by first class mail or electronically if the employee has agreed to receive notices in this manner.

The form for employers who offer coverage requires that the employer make a determination of whether or not the employer's plan offers coverage that meets the Minimum Value criteria. Minimum value means that the coverage pays at least 60% of the total allowed costs (not 60% co-insurance). There are three methods that may be used to determine the "value" of the group health plan(s) offered by the employer:

- Use the "Minimum Value Calculator" found under Plan Management, Affordable Insurance Exchanges at the following website: <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/index.html>
- Design your benefits using the Benefit Design Checklists (not yet published).
- Hire an actuary to determine the "value" of the group health plan.

The Summary of Benefits and Coverage (SBC) for the next plan year will also require employers to disclose whether their group health plans meet the Minimum Value requirements.

Employers are required to determine the affordability of the coverage they offer. This test currently applies to self-only coverage. There are three "safe harbor" methods that employers can use to make this calculation:

- The Form W-2 Safe Harbor (calculates affordability on the basis of the employee's wages as reported in Box 1 on the W-2); or
- The Rate of Pay Safe Harbor (calculates affordability on the basis of the employee's hourly rate times 130 hours for hourly employees or the employee's gross monthly salary for salaried employees); or
- The Federal Poverty Line Safe Harbor (calculates affordability on the basis of 100% of the federal poverty level for that year. For 2013, the monthly amount is \$957.50).

The EBMS Legal team will assist you with completing the Minimum Value and Affordability calculations and mailing the Notice to Employees of Coverage Options. If the group health plan(s) can be used with the Minimum Value Calculator, the charge for services will be \$2.00 per notice mailed. If an actuary is necessary to determine the "value," the plan would be responsible for the additional costs of the actuarial review.

Please contact your Account Manager if you would like EBMS to assist you with this new requirement or if you have any questions.