

Affordable Care Act reporting requirements – IRS' first pass

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In brief

Employers and issuers will have new IRS reporting obligations as key players in implementing Affordable Care Act (ACA) health coverage mandates – newly proposed regulations give a glimpse of what this will entail. This summer, the White House announced a one-year delay in the ACA requirements for issuers and employers to report information to the IRS and to covered individuals concerning health coverage they provide, as well as a one-year delay in the ACA employer shared responsibility penalties (the employer mandate). Proposed regulations have now been issued on the requirement for issuers and employers to report to the IRS the minimum essential coverage (MEC) they provide and to furnish related statements to covered individuals. Proposed regulations have also been issued on the requirement for employers with more than 50 full-time equivalent employees to report to the IRS information about the health coverage they have offered employees as well as monthly information concerning each employee's coverage, and to furnish statements to employees. These regulations will become effective with respect to coverage provided in 2015 with reporting first due early in 2016; compliance for 2014 is voluntary. Comments on the proposed regulations are due by November 8, 2013.

In detail

Background

Under ACA, individuals without health coverage that meets minimum standards – 'minimum essential coverage' or MEC – will face possible penalties (the 'individual mandate'). In addition, employers with at least 50 full-time equivalent employees ('applicable large employers') may face possible penalties if they fail to offer MEC to full-time employees, or if the coverage offered is not affordable, minimum value coverage. These 'employer shared responsibility' or 'employer mandate' penalties

are triggered if a full-time employee gets premium tax credits to buy health insurance on an exchange/marketplace. Premium tax credits are not available to individuals who are eligible for MEC from their employers if the coverage provides minimum value and is affordable for them. [See *Overview of key tax provisions under the Affordable Care Act.*](#)

To enforce these penalties and properly administer the premium tax credits, ACA imposes several annual reporting requirements on health insurance issuers and employers. Like Form W-2 reporting, the general structure

is for information to be reported to the IRS on an aggregated basis along with a transmittal form, and for individuals to receive reports with the information that is relevant to them or specifically about them.

Minimum essential coverage reporting

Under Code section 6055, issuers of individual and group coverage, government agencies and self-insured employers must report to the IRS information about individuals with MEC. A written statement with this information must also be provided to covered individuals.

Large employer reporting

To enforce the employer shared responsibility penalties, Code section 6056 requires employers with 50 or more full-time equivalent employees to certify whether the employer offers MEC to full-time employees (and their dependents), and report to the IRS information about itself, its full-time employees and its health plan coverage on a month-by-month basis. Like the section 6055 reporting, individuals must receive a statement including the information relevant to them.

Observation

The reporting requirements are particularly troublesome for self-insured employers that are subject to both types of reporting. As mentioned above, the Administration has delayed implementation of the reporting requirements and the employer shared responsibility penalties until 2015. This delay will allow the IRS to make changes in response to public comments before finalizing these regulations, hopefully giving employers and insurers sufficient time to implement procedures so they can provide the required information for 2015.

Proposed regulations

The IRS issued two sets of proposed regulations, one for the MEC reporting under section 6055, and a second under section 6056 on the reporting requirements for applicable large employers.

Although the IRS considered ways to streamline and consolidate the reporting, particularly for self-insured employers that have to file under both reporting regimes, the proposed regulations do not allow combined reporting of this information, despite some overlapping requirements. However, the IRS is considering various ways to combine reporting,

including the use of optional codes on the Form W-2 and an option for self-insured employers to provide a single statement to employees that would satisfy the information statement requirements under both sections 6055 and 6056. IRS requested comments on other ways to simplify and combine reporting.

Observation

Although IRS considered and discussed a number of possible approaches to simplified or consolidated reporting, the proposed regulations don't give enough guidance or certainty for organizations that are subject to the section 6055 and/or 6056 reporting to implement these alternative approaches.

Reporting minimum essential coverage

Who is responsible for reporting MEC?

Health insurance issuers are responsible for reporting for all insured MEC, including individual coverage sold outside of public exchanges, and group coverage sold outside of public exchanges as well as through the exchange-based small employer health options program (SHOP). Issuers need not report on individual coverage under qualified health plans (exchanges will do that reporting) or Medicare or Medicaid products (governments will do that reporting).

Sponsors of self-insured health coverage are responsible for reporting for their plans and furnishing statements to covered individuals. In the case of a self-insured plan covering employees of related corporations, each separate participating employer (also known as a 'member') is responsible for reporting for its employees, although

one member of the group may assist other members.

The proposed rules include special approaches that self-funded government employers and multiemployer funds may adopt. For example, several governmental entities participating in a governmental plan may designate one of the entities to file returns and furnish statements to covered individuals.

Issuers, self-insured plan sponsors and other reporting entities may use third parties to facilitate filing returns with IRS and furnishing statements to covered individuals, but the liability for failure to report and furnish statements remains with the reporting entities.

What must be reported?

The proposed regulations require issuers and employers to report the name and TIN (tax identification number such as a Social Security Number (SSN)) of each covered individual, including covered dependents, and the months of coverage.

Observation

Many employers currently do not collect SSNs for all dependents covered by their plans. To comply with this new reporting requirement, those employers will have to try to obtain this information and document their attempts. Entities that make reasonable efforts to obtain TINs will not be subject to penalties if they do not receive them for each covered individual. According to the IRS, a 'reasonable effort' means making an initial request for a TIN followed by two consecutive annual solicitations. An entity that fails to obtain a TIN after these efforts may report the coverage using the individual's date of birth instead.

Reporting by applicable large employers

Who is responsible for reporting?

Applicable large employers are subject to the reporting requirement, whether they offer insured or self-insured coverage, or no health coverage at all. Under the proposed regulations, the reporting requirements apply to each member of an aggregated group, as is the case for reporting MEC. Each member with full-time employees is responsible for the IRS filing and furnishing statements with respect to its common-law employees. A reporting entity may designate another entity, such as a third-party administrator or another member of its controlled group, to prepare the returns and statements with respect to its full-time employees. Whether an employee is a full-time employee is determined based on the IRS rules for the employer mandate penalties. Disregarded entities are subject to these reporting requirements.

Observation

Because employer shared responsibility penalties are proposed to be determined and assessed for each member of a controlled group, the proposed reporting is structured so that each member of the controlled group would have reporting responsibility. This approach may be inconsistent with some controlled group data management and systems configurations.

What must be reported?

Under section 6056, the employer must provide identifying information, a certification of MEC offered to full time employees (and their dependents), by calendar month and, if MEC is offered, the months during which coverage was available and the employees' share of the premium for the lowest cost self-only coverage option providing minimum value that is available, by month. In addition, the

report must include the total full time employee count for each month, and, for each full time employee, their name, address and TIN, and the actual months of coverage for the employee and dependents.

How will the information be reported to the IRS and covered individuals?

The IRS is developing new forms (and transmittal forms) to satisfy these reporting requirements, which must be filed electronically with IRS if the employer files at least 250 returns. To determine the 250-return threshold, all returns, regardless of type, that a filer is required to file, including income tax returns, employment tax returns (Form W-2), information returns (Form 1099 series), and excise tax returns, have to be aggregated.

Observation

This is a different standard than is used for determining whether other information returns such as the Form W-2 or Form 1099-R must be filed electronically. For those returns, the 250-or-more requirement applies separately to each type of form. Under the aggregation rules in these proposed regulations, many more employers will be required to file electronically even if they are currently allowed to file their Forms W-2 and other information returns on paper.

Both sets of proposed regulations would permit electronic delivery of the employee statements if the recipient consents, as well as furnishing a single statement per address. The regulations also provide that the individual's full TIN is not required on the employee statements, under the IRS truncated TIN program.

The IRS is considering possible ways to simplify or combine these new reporting requirements, including adding new codes to the Form W-2. Future guidance may permit the use of a single statement to covered

individuals to satisfy the different reporting requirements, but that guidance has not yet been proposed. The preamble to the regulations discusses other ways the IRS might require some of this detail as well as additional information, for example, by adding codes to the transmittal forms or to employees' Forms W-2 to indicate whether there is a waiting period, whether the employee may enroll their spouse or dependents, the total number of employees, and other information the IRS would find useful.

What's out?

The IRS decided to exclude several items from information reporting, including the employer's share of premium costs, the length of any waiting period, and the monthly premium for enrollment categories or coverage tiers other than self-only.

Timing

Reporting entities must file the returns required under these proposed rules on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which they provided coverage. Statements to individuals must be furnished on or before January 31 of the year following the calendar year of coverage. This is the same time frame that applies to other information returns such as Forms W-2 and the Form 1099 Series.

Are there penalties for failure to comply?

Entities that fail to comply with these reporting requirements may be subject to significant penalties for failure to file correct information returns and for failure to furnish correct payee statements. The penalty for a late or incorrect information return runs from \$30 to \$100 per return, capped at \$1.5m per year.

An additional penalty applies for each failure to file a correct payee

statement in the same amount and applied in the same manner as the penalty for failure to timely file correct information returns. Exceptions apply for de minimis failures. The IRS may waive penalties if the failure is due to reasonable cause and not to willful neglect. However, significantly steeper penalties may be imposed for intentional disregard of the information reporting rules.

The takeaway

Issuers and affected employers should review the proposed regulations and assess how implementation will impact their organizations. Compiling the information that must be reported and actually generating these reports for all full-time employees and other covered individuals will be a major undertaking for many employers, and could involve internal resources such as human resources/benefits, payroll, and IT, and external vendors. While

the IRS and Treasury are continuing to look into ways to simplify and possibly combine some of these reports, those methods have not yet been proposed. Accordingly, issuers and affected employers should prepare to file these new forms for 2015, along with the associated employee statements. In addition, employers must continue to report the value of all health coverage provided on employees' Forms W-2.

Let's talk

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