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Employment, Labor & Benefits Advisory

MAY 8, 2012

IRS Asks for Comments on Employer Reporting of Health Insurance Coverage Under Affordable Care Act

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The Patient Protection and Affordable Care Act (the Act) imposes new, substantive requirements on health insurance issuers in the group and individual markets and employer-sponsored group health plans. In two recently issued notices, Notice 2012-32 and 2012-33, the IRS invited comments on reporting requirements that accompany certain of the Act's requirements that apply to all issuers and plans that provide "minimum essential coverage" and to "applicable large employers" under the Act's shared responsibility requirements.

Notice 2012-32

Where a non-exempt US citizen or green card holder is covered under an employer plan that provides "minimum essential coverage," he or she will not be subject to a tax penalty under the Act's individual mandate. (The Act defines "minimum essential coverage" to include health insurance coverage offered in the individual market, an eligible employer-sponsored plan, or government-sponsored coverage, such as Medicare, Medicaid, the Children's Health Insurance Program, TRICARE, or veterans' health care.) In order to track compliance, the Act added Internal Revenue Code § 6055, which imposes reporting requirements on state-licensed insurance carriers, government agencies, employers that sponsor self-insured plans, and other entities that provide minimum essential coverage. This new reporting requirement applies to minimum essential coverage provided on or after January 1, 2014. Thus, the first information returns under these rules will be filed in 2015.

Code § 6055 provides that all information returns reporting minimum essential coverage are to contain:

1. The name, address, and taxpayer identification number of the primary insured and each other individual covered under the policy or plan,
2. The dates each individual was covered under minimum essential coverage during the calendar year,
3. In the case of health insurance coverage, whether the coverage is a qualified health plan offered through a state-based insurance exchange,
4. If the coverage is a qualified health plan offered through an exchange, the amount (if any) of any advance payment of the premium tax credit or of any cost-sharing reduction, and
5. Other information that the Secretary of Health and Human Services (HHS) requires.

Information returns for coverage provided by a health insurance issuer through an employer's group health plan must also include the name, address, and employer identification number of the employer, the portion of the premium to be paid by the employer, and any other information that HHS requires for administering the credit for employee health insurance expenses of small employers. In addition, the entity filing an information return must furnish a written statement to individual participants showing the information listed above.

Notice 2012-32 requests comments on the following issues:

1. How to determine when an individual's coverage begins and ends for purposes of reporting the dates of coverage.
2. How to minimize duplication between the reporting by health insurance issuers and employers under Code § 6055 and the reporting by exchanges.
3. How to coordinate and minimize duplication between the reporting under Code §§ 6055 and 6056 (see below), and any other applicable Code provision for employers that sponsor self-insured plans.
4. When minimum essential coverage is provided through a VEBA or other type of welfare benefit fund that is required to report under Code § 6055, who is required to report and what, if any, special rules should apply.
5. Whether there are any specific concerns that should be taken into account in any of the following circumstances:
    a. In the case of electronic information reporting and delivery of statements to individuals and the IRS;
    b. If a third party administrator has information that is relevant to reporting for a self-insured plan;
    c. If an individual is covered under one type of coverage for part of the year and another type of coverage for another part of the year; or
    d. When minimum essential coverage is provided under a multiemployer plan.
6. Whether any difficulties exist in identifying the person responsible for administering information reporting for governmental coverage, for example in state-administered programs such as Medicaid.
7. Any additional suggestions for minimizing burden on entities reporting information.

Notice 2012-33

Effective for years beginning after December 31, 2013, Code § 4980H requires every applicable large employer (i.e., employers with 50 or more full-time equivalent employees) to satisfy the Act's "employer shared responsibility" requirements. (For an explanation of employer shared responsibility rules, please see our advisory of February 14, 2012.) While the Act does not require employers to offer or pay for coverage, it does furnish certain incentives to do so. Employers that offer coverage will generally pay less in the way of "assessable payments." For years beginning after 2013, Code § 6056 directs large employers to file a return that reports the terms and conditions of the health care coverage provided to the employer's full-time employees for the year. The return must also disclose information about the applicable large employer's full-time employees, including those who received the coverage and when they received it. The Act permits the regulators to combine in a single reporting form the information required under Code § 6056 with the Form W-2, Wage and Tax Statement. Employers may also contract with their insurance carriers to include information under Code § 6056 with the carrier's return/statement provided by the carrier under Code § 6055.

The return used to satisfy the requirements under Code § 6056 must:

1. Include the name and Employer Identification Number (EIN) of the applicable large employer;
2. Include the date the return is filed;
3. Certify whether the applicable large employer offers its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan and, if so, certify
    a. The duration of any waiting period with respect to such coverage;

b. The months during the calendar year when coverage under the plan was available;

c. The monthly premium for the lowest cost option in each enrollment category under the plan; and

d. The employer's share of the total allowed costs of benefits provided under the plan.

4. Report the number of full-time employees for each month of the calendar year;

5. Report, for each full-time employee, the name, address, and taxpayer identification number (TIN) of the employee and the months (if any) during which the full-time employee (or any dependents) were covered under the eligible employer-sponsored plan; and

6. Include such other information as may be required by the Secretary of the Treasury.

Under Code § 6056(c), each applicable large employer must also furnish each full-time employee a written statement that includes the employer's contact information (including a contact phone number) and information relating to coverage provided to that employee (and dependents), along with the information described above, no later than January 31 following the close of each calendar year.

Notice 2012-33 requests comments "on issues arising under [Code] § 6056 that would be helpful for the regulations to address, including how to coordinate and minimize duplication between the data employers must report under Code § 6056 and other provisions of the Act.

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