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compliance ALERT

IRS Clarifies Confusing ACA Information Reporting Rules for Sponsors of Self-Funded Plans

August 4, 2016

On August 2, 2016, the IRS published proposed regulations ("the Proposed Rules") that were designed to clarify Affordable Care Act (ACA) reporting issues that have arisen for sponsors of self-insured health plans and other coverage providers under Section 6055 of the Internal Revenue Code (Code).

The IRS first identified several of these confusion areas in Notice 2015-68 issued in September of 2015, and these Proposed Rules were designed to better explain that Guidance. While the Proposed Rules are quite technical, they are extremely helpful for employers reporting in the 2016 plan year and beyond.

How Do the New Rules Change Current ACA Reporting Requirements?

As background, under current ACA information reporting rules issued under Section 6055 of the Code, self-insured health plan sponsors, insurers and other coverage providers that offer minimum essential coverage (MEC) must report to the IRS information about the type and period of coverage offered to employees, dependents and other covered individuals, and then furnish related statements to these covered individuals. The information reported (on Forms 1095-B and 1095-C, Part III) allows the IRS to verify the months during the year when individuals were covered by MEC for purposes of administering the individual shared responsibility provisions of the ACA (commonly referred to as "the Individual Mandate").

The Proposed Rules contain many important clarifications about the information that must be reported and how it must be reported. Set forth below are some of the more noteworthy clarifications.

TIN Clarifications

Perhaps the most significant clarifications contained in the Proposed Rules pertain to the proper use of, and solicitation of, taxpayer identification numbers (TINs) that are used in MEC reporting. As background, reports filed with the IRS and statements furnished to individuals by MEC coverage providers must include the EIN of the employer and the TIN (e.g., the Social Security Number) of the "responsible individual." The "responsible individual" generally means the primary insured, employee, or other person named on an insurance application who enrolls himself and other individuals in MEC.

SYNOPSIS

The Proposed Rules clarify the information that must be reported and how to report it.

Clarifications cover:

- **Taxpayer identification numbers**
- **Missing TINS**
- **Multiple coverage offers**
- **Reporting of supplemental MEC coverage**
- **Catastrophic coverage**

Missing TINs

During the first reporting year, many employers had considerable difficulty obtaining correct TINs from their employees, causing considerable worry and confusion. The penalties for inaccurate or late reporting are steep. Employers and other reporting entities that fail to timely file and complete the forms are subject to penalties of $250 per return or statement, up to a maximum penalty of $3 million.

There is, however, penalty relief if the employer made good faith efforts to comply with the reporting requirements and if any failure to correctly or accurately file (including the failure to provide a TIN) is due to reasonable cause and not willful neglect.

Generally, in order to obtain such penalty relief, employers must act in a responsible manner to ensure that they have the proper TIN on the reporting form or statement. The IRS will deem the employer to have acted responsibly (and therefore, waive reporting penalties) if the employer engages in a TIN solicitation process, and this process was clarified in the Proposed Rules.

Specifically, the Proposed Rules clarify that if an employer cannot obtain the TIN of a covered individual, then it is permitted to report a birth date of a covered individual if a TIN is not available after reasonable efforts are made to obtain it.

Further, penalties would be waived for missing TINs when a filer acts in a responsible manner by initially soliciting an individual's TIN when an account is "opened" (*i.e.*, at the time the employer receives a substantially complete application for new coverage or to add an individual to existing coverage). If the TIN is not received, a second solicitation (referred to in the Proposed Rules as "the first annual solicitation") must be made no later than 75 days after the date on which an account was opened, or, if the coverage is retroactive, no later than 75 days after the determination of retroactive coverage is made. A third solicitation (referred to in the Proposed Rules as the "second annual solicitation") must be made by December 31 of the year following the initial solicitation.

Transitional Relief for Individuals Already Enrolled in Coverage

The IRS also provided an additional transition rule to ensure that the first and second annual TIN solicitation rules are met regarding individuals who are already enrolled in coverage. Under this rule, the date of "July 29, 2016" is treated as the account opening date, and filers will be considered to have satisfied the requirement for initial solicitation for already enrolled individuals so long as they requested a TIN either as part of the application for coverage or at any other point before July 29, 2016. The first annual solicitation may be made at any time up to 75 days after July 29. This transition relief was designed to provide employers and other coverage providers with additional time for the first and second annual solicitation.

Additional Clarifications Regarding TIN Solicitation

Notably, the Proposed Rules clarify that TIN solicitations made to the responsible individual would be treated as TIN solicitations of every covered individual on the policy or plan. However, to avoid penalties, an employer or other coverage provider is required to solicit TINs separately for any individual added to a policy or plan. The Proposed Rules also permit electronic TIN solicitation if certain requirements are met.

Clarifications Regarding Multiple Coverage Offers

The current rules on MEC reporting left many unanswered questions for employers making multiple offers of MEC coverage. The Proposed Rules clarify that:

Reporting of Duplicative MEC Coverage

Reporting of MEC is not required if an individual is covered by more than one MEC plan or program provided by the same employer or other reporting entity. Accordingly, under this exception, coverage under a health reimbursement arrangement (HRA) or other MEC plan need not be reported for an individual if the employer or other coverage provider provides the same individual with other MEC (for example, a self-insured comprehensive major medical plan) for which reporting is required.

It should be noted, however, that this exception will not apply if the other reportable MEC is fully-insured coverage, since the reporting entity for the fully-insured coverage would be the insurer, and not the employer who sponsors the HRA or other similar type of MEC coverage.

Reporting of Supplemental MEC Coverage

Under this exception, coverage under an HRA or other MEC plan does not need to be reported for an individual if the individual is only eligible for that supplemental coverage due to the fact that he or she is enrolled in other MEC that must be reported. When this rule is applied to eligible employer-sponsored coverage (for example, an HRA), then the supplemental coverage and the other MEC must be offered by the same employer. With respect to this "same employer" requirement, the Proposed Rules clarify that all employers in a controlled group or affiliated service group are treated as the same employer.

Catastrophic Coverage Clarifications

Another clarification pertains to catastrophic coverage. Under current rules, neither Exchanges, insurers, nor employers have

WHEN DO THE RULES APPLY?

With the exception of the catastrophic coverage rules, the new rules apply on January 1, 2016 (for reporting in early 2017), and may be relied on for earlier reporting years.

been responsible for MEC reporting of catastrophic health plans, even though catastrophic coverage is considered to be minimum essential coverage. The Proposed Rules would require insurers to report catastrophic coverage on the Form 1095-B beginning in the 2017 calendar year, with returns and statements required to be filed in early 2018.

When Do the New Rules Go Into Effect? When Is the Deadline to Submit Comments to the IRS?

With the exception of the catastrophic coverage rules, the new rules apply beginning January 1, 2016 (for reporting in early 2017), and may be relied on for earlier reporting years. The deadline for submitting comments to the IRS is October 3, 2016.

How Should Employers Prepare for the New Rules? What Should Employers Do Next?

If your organization sponsors a self-insured health plan, then it's important that your HR, Payroll and Benefits Teams understand these new requirements, particularly in light of the steep penalties involved in getting this wrong. Corporate Synergies consultants, account managers and benefits technology teams can assist with this process.

If you have any additional questions, please call your Corporate Synergies Account Manager or 866.CSG.1719.

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