Segal Consulting

update

Public Sector Benefits Compliance News

October 6, 2016

New Guidance on Plan and Large Employer Reporting under the Affordable Care Act

The Treasury Department and the Internal Revenue Service (IRS) recently released new guidance on reporting requirements for health plans and large employers (defined as those with 50 or more full-time employees, including equivalents) under Sections 6055 and 6056 of the Internal Revenue Code, which were added by the Affordable Care Act. Plan sponsors and large employers will complete the reporting forms for 2016 in the same manner as they did for 2015 with minor changes.

- New instructions for the 2016 IRS Form 1095-C, which large employers must give to certain employees, and Form 1094-C, a transmittal form for the IRS;[1]
- New instructions for the 2016 IRS Form 1095-B, which small employers, health insurers and certain health plans use to report enrollment in health coverage, and Form 1094-B, a transmittal form for the IRS;[2] and
- A new proposed rule from the Treasury Department and IRS on plan reporting under Section 6055.[3]

2016 Instructions for IRS Forms 1095-C and 1094-C

The most significant change in Form 1095-C reporting is that for 2016 large employers will now be required to report "conditional" offers of coverage to spouses. A conditional offer is an offer of coverage that is subject to one or more reasonable, objective conditions (*e.g.*, an offer to cover an employee's spouse only if the spouse is not eligible for coverage under Medicare or a group health plan sponsored by another employer). The instructions provide two new indicator codes that must be used for reporting these conditional offers in line 14 of Form 1095-C.

Large employers are not required to offer coverage to spouses in order to avoid the employer penalty.[4] However, reporting the offer of coverage to a spouse

Health Compliance News Highlights:

- The reporting forms, as well as the instructions for IRS Forms 1095-C, 1094-C, 1095-B and 1094-B indicate few changes for 2016.
- A proposed rule on plan reporting appears to require plan sponsors to report enrollment in coverage that supplements Medicare.
- A new schedule for asking employees for Taxpayer Identification Numbers for inclusion on the reporting forms is proposed.

[1] The instructions are on the IRS website. The 2016 IRS Form 1095-C, and 2016 Form 1094-C have also been released. They are nearly identical to the current forms used for 2015 reporting.

[2] The instructions are on the IRS website. The 2016 IRS Form 1095-B and 2016 Form 1094-B have also been released. The forms and instructions are nearly identical to the current forms used for 2015 reporting.

[3] The proposed rule was published in the August 2, 2016 *Federal Register*. Large employers with self-insured group health plans generally comply with Section 6055 by completing Part III of IRS Form 1095-C. Self-insured multiemployer plans comply with Section 6055 by completing IRS Form 1095-B.

[4] Large employers are required to offer coverage to dependent children through the end of the month in which they turn 26, but are not required to offer coverage to spouses in order to avoid (or minimize) the employer penalty.

(including whether it is a conditional offer) will help the IRS determine whether the spouse is entitled to a premium assistance tax credit.[5]

Solicitation of Taxpayer Identification Numbers (TINs)

The proposed rule sets out a new schedule that reporting entities will need to follow when soliciting TINs (typically, Social Security numbers) from employees or dependents.[6]

"The proposed rule sets out a new schedule that reporting entities will need to follow when collecting TINs."

Under the proposed rule, if the coverage application or enrollment form asks for TINs, the reporting entity's "initial" TIN solicitation is made at the time the reporting entity receives a substantially complete application for coverage. If a TIN is not provided, the reporting entity must make a second solicitation within 75 days of the initial one. If a TIN is still not received, the entity must ask again by December 31 of the year after the initial solicitation was made.[7]

The proposed rule also states that it is sufficient to ask the responsible individual (*e.g.*, the employee) for the TINs of his/her dependents. In other words, separate solicitations to each covered individual are not required.

Pending issuance of a final rule, reporting entities may follow the solicitation schedule in the proposed rule or the one set out last year in Notice 2015-68.[9][8]

Supplemental Coverage

The proposed rule, if finalized, would change the rule applicable to Medicare supplemental coverage. The current regulations do not require reporting of coverage that supplements Medicare. The proposed rule appears to require that such coverage be reported. For group health plans, the proposed rule exempts supplemental coverage only when the same "employer" sponsors both the primary coverage and the supplemental coverage. Since employers do not sponsor Medicare coverage, this would appear to eliminate the current exemption for Medicare supplemental coverage.

Implications for Plan Sponsors

Plan sponsors that are missing TINs for dependents will want to review the new proposed solicitation schedule and decide whether they will adopt it. If so, they will need to adhere to the 75-day deadline for sending out the second solicitation.

How Segal Can Help

Segal works with plan sponsors and their attorneys on compliance issues. Segal can help plan sponsors and employers understand these reporting requirements and select vendors that can assist with form preparation and transmission to the IRS.

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[5] Individuals who purchase coverage through the federal Marketplace or a state Exchange are eligible for a premium assistance tax credit (also known as a "subsidy") if their household income is least 100 percent of the federal poverty line for their family size, but is not more than 400 percent of the federal poverty line. In general, a person who is eligible for employment-based health coverage will not qualify for the premium assistance tax credit, unless the group coverage is unaffordable or does not meet the 60 percent minimum value test. A plan meets the 60 percent minimum value test if it is expected to pay, on average, at least 60 percent of claims costs and provides substantial coverage of inpatient hospital services and physician services.

[6] The applicable regulations, which predate the Affordable Care Act, are found in 26 CFR 301.6724-1.

[7] The introduction to the proposed rule includes a transition rule that applies to individuals enrolled in coverage on any day before July 29, 2016 (the date the proposed rule was released). If the reporting entity asked for a TIN as part of the application process or at any time before July 29, 2016, the entity has made the initial solicitation, and the period for making the second solicitation is 75 days after July 29.

[8] For information about Notice 2015-68, which is on the IRS website, see Segal Consulting's October 1, 2015 *Update*, "The IRS Has Issued Final Instructions on Affordable Care Act Reporting that Clarify Key Issues for Employers."

Questions?

For more information about these reporting requirements and how the proposed rule may affect your plan, please contact your Segal consultant or the Segal office nearest you.

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