



## Health Care Reform **Bulletin**

# Final Rules Released on Reporting for Issuers and Self-funded Employers

Provided by Power Kunkle Benefits Consulting

### Quick Facts

- On March 5, 2014, the IRS released final rules on the section 6055 reporting requirements.
- This reporting becomes effective in 2015, with the first returns due in 2016.
- Insurers not required to report on QHP coverage through the individual Exchange.
- Relief is available for entities that make a good-faith effort to comply.

These reporting requirements are intended to provide the IRS with information necessary to administer other ACA mandates, such as the large employer shared responsibility penalty and the individual mandate.

The Affordable Care Act (ACA) requires health insurance issuers, self-insured health plan sponsors, government agencies that administer government-sponsored health insurance programs and any other entity that provides minimum essential coverage (MEC) to report information on that coverage to the IRS and covered individuals. This requirement is found in Internal Revenue Code section 6055.

On March 5, 2014, the IRS released [final regulations](#) on the section 6055 reporting requirements. These regulations finalize [proposed rules](#) issued on Sept. 5, 2013.

The final regulations apply for calendar years beginning after **Dec. 31, 2014**. This date reflects the one-year delay provided in [IRS Notice 2013-45](#). However, the IRS is encouraging voluntary compliance for 2014.

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### Entities Subject to Section 6055 Reporting

Under the section 6055 reporting requirements, every person that provides MEC

to an individual during a calendar year must report on the health coverage provided. Reporting entities include health insurance issuers, self-insured plan sponsors, government-sponsored programs and other entities that provide MEC. To ensure complete and accurate reporting, the final regulations require section 6055 reporting for all covered individuals.

### Health Insurance Issuers

Health insurance issuers are responsible for section 6055 reporting for all insured coverage except:

- Coverage under certain government-sponsored programs (such as Medicaid and Medicare) that provide coverage through a health insurance issuer; and
- Coverage under QHPs through the individual market Exchange.

To avoid collecting duplicate or unnecessary information, issuers are not required to report on coverage under a QHP through an individual market Exchange. The Exchange will provide the necessary information to the IRS and the individual. However, issuers must report on QHPs in the small group market enrolled in



through the Small Business Health Options Program (SHOP), because the Exchanges will not be reporting information on these plans.

#### ***Sponsors of Self-insured Group Health Plans***

The plan sponsor is responsible for section 6055 reporting for a self-insured group health plan. In general, the plan sponsor is the entity that establishes or maintains the plan. The employer is the plan sponsor for self-insured group health plans established or maintained by a single employer, and each participating employer is the plan sponsor for a plan established or maintained by more than one employer (other than a multiple employer welfare arrangement).

For a multiemployer plan, the plan sponsor is the association, committee, joint board of trustees or other group of representatives who establish or maintain the plan.

For purposes of identifying the employer, the section 414 employer aggregation rules do not apply. Thus, a self-insured group health plan or arrangement covering employees of related companies is treated as sponsored by more than one employer, and each employer is required to report for its employees. However, one member of the group may assist the other members by filing returns and furnishing statements on behalf of all members.

#### ***Controlled Group Rules***

Most employers that sponsor self-insured group health plans are applicable large employers (ALEs) required to report under both section 6056 and section 6055. ALEs apply the rules under section 6056 for identifying the reporting entities in a controlled group.

Employers in controlled groups that are not ALEs, and reporting entities (such as issuers) that are not reporting as employers, may report under section 6055 as separate entities, or one entity may report for the group.

#### ***Use of Third Parties***

Reporting entities are permitted to use third parties to facilitate filing returns and furnishing

statements to comply with section 6055 reporting requirements. However, these arrangements do not transfer the potential liability for failure to report.

In contrast, a government employer that maintains a self-insured group health plan or arrangement may designate (in writing) another governmental unit, agency or instrumentality as the person responsible for section 6055 reporting.

#### **Coverage Not Subject to Section 6055 Reporting**

Section 6055 reporting is not required for arrangements that provide benefits in addition or as a supplement to MEC. Health reimbursement arrangements (HRAs) are considered supplemental coverage to which this rule may apply.

In addition, reporting is not required for coverage that is not MEC. Thus, no reporting is required for health savings accounts (HSAs), coverage at on-site medical clinics or for Medicare Part B. However, Medicare Part A qualifies as MEC and is subject to reporting.

Wellness programs that are an element of other MEC (such as wellness programs offering reduced premiums or cost-sharing under a group health plan) do not require separate section 6055 reporting. The final regulations clarify that MEC that supplements a primary plan of the same plan sponsor or that supplements government-sponsored coverage (such as Medicare) are supplemental coverage not subject to reporting.

#### **Combined Reporting**

Section 6056 requires ALEs subject to the pay or play rules to report to the IRS and covered individuals information on the health care coverage offered to full-time employees. The final regulations provide that ALEs will file a combined return and statement for all reporting under sections 6055 and 6056.

An ALE that sponsors a self-insured plan will report on Form 1095-C, completing both



sections to report the information required under sections 6055 and 6056.

An ALE that provides insured coverage also will report on Form 1095-C, but will complete only the section of Form 1095-C that reports the information required under section 6056.

Section 6055 reporting entities that are not ALEs or are not reporting as employers (such as health insurance issuers, sponsors of multiemployer plans and providers of government-sponsored coverage) will report under section 6055 on Form 1095-B. Section 6055 information returns must be submitted to the IRS with a transmittal form, Form 1094-B.

These forms will be made available in draft form in the near future.

#### **Information Required to be Reported**

Section 6055 requires the reporting of several data elements that are not required by taxpayers for preparing their tax returns or by the IRS for tax administration. The section 6055 information return must include:

- The name of each individual enrolled in MEC;
- The name and last known address of the primary insured or other related person (for example, a parent or spouse) who submits the application for coverage (the responsible individual);
- The TIN and months of coverage for each individual who is covered under the policy or program; and
- Other information specified in forms, instructions or published guidance.

For employer-provided coverage, the proposed rules required reporting the name, address and EIN of the employer maintaining the plan and whether coverage was enrolled in through the SHOP. The final regulations do not require sponsors of multiemployer plans to report the EINs of the participating employers. The regulations require only health insurance

issuers to report the EIN of the employer sponsoring an insured group health plan.

Although TINs are required for section 6055 reporting, reporting entities may report a date of birth in lieu of a TIN only if the reporting entity is informed that an individual has no TIN or the reporting entity is unable to obtain a TIN after making reasonable efforts. In general, a reporting entity acts responsibly in attempting to solicit a TIN if, after an initial, unsuccessful request for a TIN (for example, at the time of enrollment), the reporting entity makes two consecutive annual TIN solicitations. A penalty may be imposed if the reporting entity fails to make the two additional solicitations.

#### **Time and Manner of Filing**

**Any reporting entity who is required to file at least 250 returns under section 6055 must file electronically.** The transmittal (Form 1094-B or 1094-C) is not treated as a separate return, but must be electronically filed in the form and manner required by the IRS when the Form 1095 is electronically filed.

All other reporting entities that are required to file fewer than 250 returns under section 6055 are permitted, but not required, to file electronically. A substitute form may be used, as long as it complies with IRS procedures or other guidance.

Reporting entities must file the section 6055 information return with the IRS by **Feb. 28 (or March 31, if filed electronically)** of the year following the calendar year in which they provided MEC.

#### **Statements Furnished to Individuals**

Reporting entities must also furnish a statement to the covered individual on or before Jan. 31 of the year following the calendar year in which MEC is provided. Reporting entities showing good cause may be allowed the flexibility to apply for an extension of time, not exceeding 30 days, to furnish statements.



Individual statements must provide (1) the policy number, (2) the name, address and a contact number for the reporting entity, and (3) the information required to be reported to the IRS.

Reporting entities may furnish the Form 1095-B or 1095-C with the Form W-2 in the same mailing. Substitute statements that comply with applicable requirements may be used, as long as the required information is included.

Electronic delivery of statements to individuals is permitted only if the recipient affirmatively consents. The final regulations explicitly allow statement recipients to provide consent and to access section 6055 statements in response to a notice on a website. A reporting entity may simultaneously request consent to receive an electronic section 6055 statement and consent regarding other statements. However, each form must be specifically referenced.

If mailed, the statement required under section 6055 must be sent to the individual's last known permanent address or, if no permanent address is known, to the individual's temporary address. A reporting entity's first class mailing to the recipient's last known permanent address, or if no permanent address is known, the temporary address, discharges the requirement to furnish the statement, even if the statement is returned. A reporting entity that has no address for an individual should send the statement to the address where the individual is most likely to receive it.

Statements furnished to individuals under section 6055 are not required to disclose their complete TINs.

#### **Penalties**

Reporting entities that do not comply with the filing and statement furnishing requirements of section 6055 may be subject to penalties for failure to file a correct information return and failure to furnish correct payee statements. However, penalties may be waived if the failure is due to reasonable cause and not to willful neglect.

The final regulations also include short term relief from penalties to allow additional time to develop appropriate procedures for data collection and compliance with these new reporting requirements. For returns and statements filed and furnished in 2016 to report coverage in 2015, the IRS will not impose penalties on entities that can show they make good faith efforts to comply with the information reporting requirements.

This relief is provided only for incorrect or incomplete information reported on the return or statement, including TINs or dates of birth. No relief is provided for entities that do not make a good faith effort to comply with these regulations or that fail to timely file an information return or statement.

#### **Voluntary Reporting for 2014**

Although these reporting requirements were delayed until 2015, reporting entities were encouraged to voluntarily comply for 2014 (that is, by filing and furnishing section 6055 returns and statements in early 2015).

Reporting entities that wish to voluntarily comply with the information reporting requirements in 2014 should do so in accordance with the final regulations. This means that reporting entities should provide both section 6055 and, if applicable, section 6056 information on a single form.

According to the IRS, real-world testing of reporting systems and plan designs, built in accordance with the final regulations, through voluntary compliance for 2014 will contribute to a smoother transition to full implementation for 2015.

#### **More Information**

Please contact Power Kunkle Benefits Consulting for more information on the ACA's employer reporting requirements.

*Source: Internal Revenue Service*

