
Health Care Reform Update: Employers Must Begin Reporting Details of Health Coverage to IRS

By Mark C. Jones and Matthew C. Ryan

The Patient Protection and Affordable Care Act (“ACA”) imposes significant new reporting requirements on employers providing self-insured group health coverage to their employees and employers subject to the shared responsibility (or “Pay or Play”) rules. Recently finalized regulations explain these requirements and provide certain employers with opportunities to reduce their reporting burden. The ACA reporting regime will become effective on January 1, 2015, relying in part on data collected in 2014.

Two Penalties and Two Reporting Duties

The Internal Revenue Service (“IRS”) is tasked with enforcing two new classes of ACA penalties. The first applies to adults who are subject to the ACA’s individual mandate but fail to secure “minimum essential” health coverage for themselves. The second class of penalties applies to employers that are subject to Pay or Play and either choose not to offer health coverage to full-time employees or offer employee health coverage that fails to meet ACA affordability or “minimum value” standards. An employer is subject to Pay or Play if it employs 50 or more full-time employees (or equivalents), either individually or when grouped with certain affiliates (its “controlled group”). The Pay or Play penalty applies only if a full-time employee obtains a premium subsidy for coverage from a public health insurance marketplace (or “Exchange”).

To enforce these new penalties and identify employees who may qualify for a premium subsidy, the IRS will rely on new Forms 1095-B and 1095-C. Section 6055 of the Internal Revenue Code (the “Code”) requires employers with self-insured health plans to report the individuals covered by their plans on Form 1095-B. This information will be used primarily for enforcement of the individual mandate. Section 6056 requires employers subject to Pay or Play to describe the health coverage they offer to employees on Form 1095-C. This information will be used primarily for enforcement of Pay or Play.

Section 6055 (Individual Mandate) Reporting

Code Section 6055 requires health insurance providers to report the identities (including Social Security numbers) and periods of coverage for all covered persons. "Covered persons" includes the primary insured (generally, the employee, in the case of an employer plan) and his or her spouse and dependents, if any. An employer who sponsors a self-insured group health plan will be subject to this reporting obligation. For employers with fully insured plans, this obligation will belong to the insurer.

There is no obligation under Code Section 6055 to provide reports on certain health benefits that merely supplement minimum essential coverage, including health reimbursement arrangements, health savings accounts, most wellness programs, and "excepted benefits" such as most dental and vision care.

Section 6056 (Pay or Play) Reporting

Code Section 6056 requires employers subject to Pay or Play to report information about the cost, value and coverage of the health benefits they offer.

General Reporting Method

The scope and detail of Code Section 6056 will make reporting a significant burden for Pay or Play employers. The default, or "general," reporting method requires an employer, on a month-by-month basis, to identify each full-time employee and provide details about the health coverage offered to that employee and his or her spouse and dependents. This will require employers to integrate and reconcile data from their payroll vendors, third party administrators and human resources personnel. Data collection must begin in 2014 for the many employers using the "lookback" method¹ to determine employees' full-time or part-time status for 2015.

In response to comments on the proposed employer reporting regulations published last fall, the IRS has developed three alternative reporting methods that will reduce the reporting burden for employers that meet certain conditions.

Alternative Reporting for Qualifying Offers

An employer need not report month-by-month details about any employee who receives a "qualifying offer" of coverage for all 12 months of the year. A qualifying offer is defined as an offer of coverage to the employee and his or her spouse and dependents that meets the ACA's minimum value standard with a premium for self-only coverage not exceeding 9.5 percent of the federal single poverty level (for 2014, a premium of \$1,109 or less). If only a portion of an employer's workforce receives a qualifying offer, those full-time employees not receiving a qualifying offer must be reported under the general reporting method.

Alternative Reporting for 2015 Qualifying Offers

For 2015 only, an employer providing qualifying offers to 95 percent or more of its full-time employees will have reduced reporting obligations for all employees, including any employees who do not receive a qualifying offer for all 12 months.

¹ The lookback method allows an employer to establish the full-time or part-time status of an employee for an up to twelve-month "stability period" based on the employee's hours during a prior "measurement period." This method is discussed in further detail in a prior Pillsbury Client Alert, [Health Care Reform Update: Large Employers Must Offer Health Coverage or Pay Assessment](#) (Jan. 2013).

Alternative Reporting for Nearly Universal Offers

Certain employers can avoid the obligations to both identify full-time employees and report monthly details about the health coverage offered to those employees. This simplified reporting approach is available to any employer that offers 98 percent of all employees (including part-time and temporary employees) the option to purchase coverage for themselves and their dependents (but not necessarily spouses) that meets the ACA's minimum value and affordability standards.

Deadlines and Electronic Filing

The reporting requirements are imposed separately on each employer within a controlled group subject to Pay or Play. Information statements, which may be on Form 1095-C or in a different format, must be provided to employees no later than January 31 of the year following the covered year. Therefore, the first statements will be due on January 31, 2016. In addition, employers must furnish the IRS with returns for each employee on Form 1095-C and a transmittal form reporting aggregate employer-level data on Form 1094-C by February 28, if filed on paper, or March 31, if filed electronically, of the year following the covered year. (Employers with 250 or more reports must file electronically.) Individual statements may be distributed to an employee with his or her Form W-2 because the two statements are subject to the same deadlines. However, if an employer wishes to distribute the health care statements electronically, it must obtain specific consent to electronic receipt from each employee in advance.

Penalty

The penalty for failing to file correct returns and statements will be \$100 per return or statement, subject to a maximum of \$1.5 million for the calendar year. Enforcement relief is available for incorrect and incomplete reporting for 2015 if the employer has made a good faith effort to comply.

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