

# Section 6055 and 6056 Reporting

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# Section 6055 and 6056 Reporting

- Proposed regulations issued September 5<sup>th</sup>
- Comments due by November 8<sup>th</sup>
- Hearings on November 18<sup>th</sup> and 19<sup>th</sup>
- Effective for 2015 calendar year
- IRS filing by March 31<sup>st</sup> (February 28<sup>th</sup> if not electronic) of year following calendar year
  - March 31, 2016 for 2015 reporting
- Individual statements by January 31<sup>st</sup> of year following calendar year
  - January 31, 2016 for 2015 reporting

# Section 6055 and 6056 Reporting

## Section 6055

Insurers, sponsors of self-insured plans, government agencies, and other parties must report information **to the IRS** for each individual for whom minimum essential coverage (MEC) was provided. A statement would also be provided **to the individual**. This reporting is intended to support the IRS enforcement of the individual mandate.

## Section 6056

Large employers subject to the “shared responsibility” provisions of ACA must report information **to the IRS** on the health care coverage provided to full-time employees. As with the Code section 6055 reporting, a statement is also provided **to the individual**. This reporting is intended to support the IRS enforcement of the employer mandate.

# Section 6055 Information Reporting

## Minimum essential coverage (MEC)

- Individual coverage in individual market
- Government-sponsored programs
  - Medicare, Medicaid, TRICARE, CHIP
- Employer-sponsored plan (insured and self-insured)
  - Any employer health plan qualifies as MEC
- Excepted benefits are not MEC
  - Standalone dental and vision, most health FSAs, critical illness, etc.
  - Excepted benefits are not subject to ACA market reforms
- Guidance to date left some open issues on definition of MEC

# Notice 2013-54

- Guidance issued September 13<sup>th</sup>
  - Jointly released by Treasury, Labor and HHS
- Addresses key issues concerning MEC and eligibility for Marketplace subsidies
- Addresses a wide range of HRA, FSA and similar program issues
- Two key large employer issues addressed:
  - EAPs
  - Retiree-only HRAs

# Notice 2013-54 - EAPs

- Many EAPs are health plans
  - Cover one or more counseling sessions for behavioral health issues
- Subject to COBRA
- W-2 reporting delayed if employer does not charge COBRA premium
- Many employers offer EAPs to all employees, full-time and part-time
  - Even if not enrolled or eligible for medical plans

# Notice 2013-54 - EAPs

- Does an EAP qualify as health coverage and MEC?
- If yes:
  - Satisfy employer mandate requirement?
  - Satisfy individual mandate requirement?
  - Subject to ACA requirements such as medical loss ratio, preventive services, reinsurance fees, grandfather notice, etc?
  - Make employee and dependents ineligible for Marketplace subsidies if enrolled?
  - Must employer offer employee option to not enroll in EAP?

## Notice 2013-54 - EAPs

- EAP treated as excepted benefits, but only:
  - “If the program does not provide significant benefits in the nature of medical care or treatment”
- Treated as excepted benefits until rulemaking is finalized
  - At least through 2014
- Employers can use a reasonable, good faith interpretation of whether an EAP provides “significant benefits in the nature of medical care or treatment”



# Notice 2013-54 - EAPs

- Can an employer use an EAP as MEC to satisfy the employer and individual mandate requirements?
  - Will EAP qualify as a “skinny plan”?
  - What is impact of not providing grandfather notice?
  - Must preventive services be covered? Other requirements?
  - Provide employees with the option to opt out of EAP?

# Notice 2013-54 – Retiree-Only HRAs

- Retiree-only HRAs are not subject to ACA market reforms
  - Annual and lifetime dollar limits allowed
- Many employers are planning to use HRAs as retiree medical strategy to help retirees access Marketplace
  - Existing HRAs with account balances or annual credits
  - New HRA programs to supplement Marketplace premiums
- Does a retiree-only HRA disqualify the retiree and dependents from Marketplace subsidies?

## Notice 2013-54 – Retiree-Only HRAs

- Notice confirms that a stand-alone retiree-only HRA is MEC if retiree is **covered** by the HRA

“The coverage would constitute minimum essential coverage ... for a month in which funds are **retained** in the HRA (including amounts retained in the HRA during periods of time after the employer has ceased making contributions.)”

- HRAs that provide retiree with annual election to participate in retiree-only HRA would allow retiree to access Marketplace subsidies if no amounts retained in HRA

# Notice 2013-54 – Retiree-Only HRAs

- Are other HRA designs viable based on this notice?
  - Employer credits amounts to retiree-only HRA while employee is active that can only be used for Medicare coverage. HRA funds can't be accessed for any purposes pre-Medicare eligibility.
  - Retiree has HRA balance but can make annual election to either use HRA funds pre-Medicare or defer them to next year.
  - HRA funds are “suspended” at election of retiree until Medicare eligibility, similar to treatment currently provided for HRAs and HSAs coordination.

# Section 6055 Information Reporting of MEC

Statute - Insurer and Employer	Regulations- Insurer and Employer
	<b>Name, address, EIN for the return filer</b>
Name, address, TIN of primary insured	Name, address, TIN/ <b>DOB</b> of <b>responsible individual</b>
Name, TIN of each covered individual	Name, TIN/ <b>DOB</b> of each covered individual
Dates of coverage for each individual	<b>Months</b> of coverage for each individual
Whether coverage is QHP in exchange	
Amount of advanced premium tax credit	
Amount of cost-sharing reductions	
Other information needed by Secretary	Other information <b>specified in guidance</b>
Statute - Employer	Regulations- Employer
Employer name, address, EIN	Employer name, address, EIN
Portion of premium paid by employer	
Information for small employer tax credit	<b>Whether coverage is QHP in SHOP</b>

# Section 6055 Information Reporting

## Who is responsible for reporting?

Self-insured group health plans	Employer Each member of controlled group is responsible for reporting.
Employer-sponsored insured group health plans	Insurer
Multi-employer plans	Joint board of trustees, committee, etc.
Individual QHPs sold in exchanges	Exchanges
SHOP plans sold in exchanges	Insurer
Government-sponsored programs	Appropriate government agency
Government employers	Employer

# Section 6055 Information Reporting

- Reporting is required on a calendar year basis, even for non-CY plans
- Reporting on Form 1095-B
- Third parties can complete the filings on behalf of reporting entities
- Includes all individuals covered by MEC, not just FTEs
  - Part-timers
  - Retirees (including retirees with retiree-only HRAs)
- Distribution of individual statements
  - Electronic is permitted, but only if recipient affirmatively consents
  - One statement per address is permitted

# Section 6056 Information Reporting

- Used to:
  - Enforce employer mandate
  - Support determination of exchange subsidy eligibility
  - Support determination of satisfaction of individual mandate
- Required for applicable large employers (50 or more FTEs)
- Reporting on Form 1095-C
- Reporting by each member of controlled group



# Section 6056 Information Reporting

Employer member name, address and EIN

Name and telephone number of large employer's contact person

Calendar year for information

Certification of whether employer offered FTEs (and dependents) MEC by month

Months during calendar year when coverage under plan was available

Each FTE's share of the lowest-cost monthly premium (self-only) for coverage providing minimum value offered to that FTE under employer-sponsored plan, by calendar month

Number of FTEs for each month of calendar year

Name, address, TIN of each FTE during calendar year, and months employee covered

*Following reporting requirements were not included in proposed regulations:*

*Length of waiting period*

*Employer's share of total cost*

*Lowest-cost option in categories other than self-only*

*Months for which employee's dependents were covered by plan*

# Section 6056 Simplification

- Use of “indicator codes”:
  - Whether plan meets minimum value
  - Total number of employees
  - Satisfaction of affordability safe harbor
  - Other alternatives listed
- Using code(s) on Form W-2

# Combined Section 6055 and 6056 Reporting

- Large self-insured employers are subject to both 6055 and 6056 reporting
  - IRS considering combined 6055 and 6056 reporting to Treasury
  - Combined employee reporting
  - Use of Form W-2
  - Seeking comments

# Reporting Simplification

- Alternatives referenced in regulations
  - Form W-2 reporting of price of lowest cost plan that satisfies minimum value standard
  - Employer certification that all employees who were not offered coverage are not full-time employees
  - Coverage is provided to all employees and family members at no contribution
  - Limited reporting for highly paid employees who are ineligible for exchange subsidies
  - Simplified reporting if employee-only contribution below threshold
- IRS open to suggestions