

Self-Funded Group Health Plans and HRAs Get New Direction From IRS

Collecting personal information for your group health plan to meet Affordable Care Act (“ACA”) reporting requirements is tedious enough already. But **what’s worse is if you don’t get the info you need** – or individuals give you the wrong info – **it can lead to thousands of dollars in government fines** for you, the employer.

In a move designed to help employers by clarifying how they are expected to collect information – and what to do when the info they get is wrong – the Internal Revenue Service (“IRS”) recently released a Notice of Proposed Rulemaking (“NPRM”). This NPRM clarifies the Minimum Essential Coverage (“MEC”) reporting requirements for Health Reimbursement Arrangements (“HRAs”), which are self-funded group health plans.

Under ACA, employers with self-funded medical plans are required to report MEC to the IRS and issue statements to covered individuals. The reporting is required under IRC 6055 and is used by the IRS to ensure individuals comply with the individual healthcare mandate. And part of those reporting requirements is collecting Tax Identification Numbers (“TINs”) and other personal identifying information on individuals who participate in group health plans.

But, what happens when an employer is missing TINs or the TIN an employee has provided is incorrect? The NPRM also addresses what employers with self-funded medical plans must do to collect the TINs for covered members. An incomplete or inaccurate Form 1095-B or Form 1095-C filed with the IRS or issued to the taxpayer to report MEC **can trigger noncompliance penalties of \$260 per return** for each type of violation. An employer is subject to the penalty unless they can demonstrate that they made every possible attempt to collect the TINs for covered individuals under the plan.

The ACA also added a new section - section 6056. This new section requires Applicable Large Employers (“ALEs”) to file and furnish statements containing information related to offers of coverage that are made to each full-time employee. To properly complete these statements using Form 1095-C, employers must have each employee's TIN. Per the requirements of a different code section (section 301.6724-1(e)(1)(ii) in case you're curious), employers should have already sought each employee's TIN before the deadline for filing and furnishing statements. Therefore, the TIN solicitation rules in this NPRM only apply to information reporting under section 6055. These rules impact employers with self-funded group health plans.

ACA Reporting for HRAs

This NPRM clarifies reporting procedures when an individual is covered under an employer’s group health plan and HRA, both of which are considered MEC under the ACA. Last year, there was some confusion about an employer’s obligation to report MEC for HRAs. The new Notice contains two rules:

- 1) If an individual is covered by more than one minimum essential coverage plan or program provided by the same reporting entity, reporting is required for only one of the plans or programs; and
- 2) If an individual is required to be enrolled in an employer’s group health coverage in order to be eligible for additional or supplemental MEC, and that first plan requires section 6055 reporting, then reporting for the supplemental MEC is not required.

By these new rules, MEC reporting would not be required for the supplemental HRA under the following scenarios, as long as MEC is reported for the major medical (or primary) group health plan either by the employer (self-funded arrangement) or the insurance carrier (insured arrangement):

- An individual is enrolled under a self-funded group health plan and HRA provided by the same employer (Rule 1)
- An employee is eligible to enroll in an HRA only if the employee enrolls in the employer’s insured group health plan and the employee actually enrolls in both plans.(Rule 2)

If an employee is enrolled in an employer's HRA and a spouse's non-HRA group health plan, the employee's employer is required to report coverage for the HRA. The spouse's employer (or insurance carrier, if the plan is insured) is required to report the non-HRA group health plan coverage.

Obtaining Tax Identification Numbers: Self-Funded Plans That Report MEC

The IRS needs certain taxpayer information, such as name, address and the TIN (i.e., Social Security number), for the covered individual, whether they're an employee or a COBRA-qualified beneficiary named on Part I of Form 1095-B or 1095-C. A TIN is also needed for all other covered individuals in the taxpayer's family listed on Forms 1095-B and 1095-C. When a TIN is missing, the employer must report the date of birth for the covered individual as an identifier. However, **the employer will need to make three attempts to obtain the required TINs to avoid potential penalties**. In general, the TIN solicitation requirements or steps are:

- First, the TIN is initially requested at the time the employee or other eligible individual first applies for coverage under the plan. The account is considered open when the employer receives a substantially completed application for new coverage or when a covered individual is adding a spouse and/or dependent to the plan.
- Next, the first annual solicitation is made by the 75th day after the date on which the account was opened.
- Finally, the second annual solicitation is made no later than December 31 of the year after the year the account is opened.

After filing the forms with the IRS, an employer that receives a validation error when the name and TIN on Forms 1095-B and 1095-C do not match IRS records is not required to solicit a TIN as a result of this error message. The IRS also notes that a validation error doesn't automatically mean an employer is going to incur a penalty. More information on what procedures may be required when a validation error occurs would be helpful and will hopefully be included in future updates.

Certain TIN solicitation transition rules also apply under [Notice 2015-68](#) for individuals enrolled in coverage on or before July 29, 2016. Until final regulations are released, **employers may rely on the TIN solicitation procedures in the proposed regulations and Notice 2015-68 to qualify for penalty relief for incorrect or missing TINs**.

In the meantime, employers should make every effort to collect correct TINs from employees and their dependents who enroll under the employer's self-funded group health plan in order to avoid penalties.

ADDITIONAL INFORMATION

Information contained in this Update is not intended to render tax or legal advice. Employers should consult with qualified legal and/or tax counsel for guidance with respect to matters of law, tax and related regulation. Cherry Bekaert Benefits Consulting, LLC provides comprehensive consulting and administrative services with respect to all forms of employee benefits, risk management, qualified and non-qualified retirement plans, private client services, transaction services, and compensation and human resources.

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