



Commonwealth Benefits Group

2 Barlo Circle

Suite C

Dillsburg, Pennsylvania 17019

(717) 432-1010

<http://www.commonwealthbenefitsgroup.com>

HEALTHCARE REFORM UPDATE 2014-05



UBA **PPACA** Advisor

What Employers Need to Know Right Now
About Health Care Reform

IRS Releases Final Reporting Regulations

In order for the Internal Revenue Service (IRS) to verify that individuals and employers are meeting their shared responsibility obligations and that individuals who request premium tax credits are entitled to them, employers and issuers will be required to provide reporting on the health coverage they offer. The reporting requirements are in two separate sections of the Patient Protection and Affordable Care Act (PPACA) -- sections 6055 and 6056. Reporting will first be due early in 2016, based on coverage in 2015.

On March 10, 2014, the IRS published final regulations implementing this reporting requirement. However, the actual forms that will be used for this reporting have not yet been provided. A number of details will not be available until the reporting forms and instructions are released. The IRS says that a draft of the forms and instructions will be available soon.

The section [6055](#) information will be used to verify that an individual has minimum essential coverage. This information will be provided by the insurer for fully insured plans issued outside the individual Marketplace and for policies issued through the SHOP Marketplace. The Marketplace (also called the exchange) will do the reporting for individual policies sold through the Marketplace. Entities that do not offer fully insured coverage, such as employers that sponsor self-funded plans (no matter how small), the joint trustees or committee that oversees a multiemployer plan and the government agency that provides non-employment coverage (such as Medicare and Medicaid) also must report this information.

The section [6056](#) information will be used to determine whether a large employer is offering affordable, minimum value coverage to full-time employees, and to calculate the penalty if it is not. This information also will be used to help determine whether an employee is eligible for a premium tax credit. All large employers (those with 50 or more full-time or

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full-time equivalent employees in the prior calendar year) must provide section 6056 reporting, regardless of whether the group health plan is fully insured or self-funded.

Therefore, depending on their size and method of funding, employers and issuers may need to complete one or both parts of the form. Generally, an employer with fewer than 50 full-time and full-time equivalent employees that sponsors a fully insured group health plan will not be required to do any reporting. An employer with fewer than 50 full-time and full-time equivalent employees that sponsors a self-funded group health plan will complete the section 6055 portion of the form. An employer with 50 or more full-time and full-time equivalent employees that sponsors a fully insured plan will complete the section 6056 portion of the form. An employer with 50 or more full-time and full-time equivalent employees that sponsors a self-funded plan will complete both parts of the form.

The reporting will occur with the same timing and process as W-2 and W-3 reporting. The individual will receive a report on an IRS Form 1095 that provides information about his or her coverage. The individual's report will be due on January 31 following the calendar year that is being reported. The employer will provide a "roll-up" report using an IRS Form 1094 and copies of the individual 1095 forms. The employer report will be due by February 28 (or March 31 if filed electronically). Employers will be required to file electronically if they issue 250 or more forms. Reporting must be done on a calendar year basis, even if the plan or policy operates on a non-calendar year.

The 1095 form only needs to be provided to the named insured. Employers that mail the form may send it with the W-2 form. If the form is mailed to the employee's last known permanent address and it is returned, the employer does not need to resend the form. Employers may provide the form electronically to the employee if the employee provides a consent that meets certain requirements. If the form is sent electronically and it is returned, the employer must try to obtain a current electronic address. If that is not possible, the notice must be mailed or hand-delivered within 30 days.

Employers concerned about maintaining and transmitting Social Security numbers may use truncated numbers (XXX-XX-1234). Substitute forms will be permitted.

Minimum Essential Coverage (Section 6055) Reporting *(primarily affects employers and employee organizations with self-funded plans, regardless of size)*

Entities that provide minimum essential coverage must complete the section 6055 portion of the IRS Form 1095. This information must be provided by the insurer for fully insured plans and the plan sponsor for self-funded plans. A plan sponsor generally is the employer for employer-provided coverage and the board of trustees or committee for a multiemployer plan. Each employer in a multiple employer welfare arrangement (MEWA) must file a separate report. Governmental agencies may designate an entity to file for the entire plan. The employee organization must file for a self-funded plan maintained solely by a union or other employee organization. Reporting is required on all individuals who actually have coverage, even those who may be exempt from the individual mandate. Reporting is not needed on individuals who are eligible for, but decline coverage. The insurer or plan sponsor will need to report:

- Its name, address, and employer identification number (EIN)
- The name, address, and Social Security number of the "responsible individual" (typically the employee or primary insured)

- The name and Social Security number (or date of birth if a Social Security number is not available; generally the employer must make two attempts to obtain the number) of each covered spouse and dependent
- The calendar months each employee, spouse, or dependent child was covered for at least one day
- The name, address, and EIN of an employer sponsoring the plan
- Whether coverage is through a SHOP Marketplace, and if so, the SHOP's unique identifier

Large Employer (Section 6056) Reporting (*affects employers with 50 or more full-time or full-time equivalent employees; controlled group rules apply*)

All large employers must file the section 6056 report to provide information on whether it offered minimum essential coverage to most full-time employees, and whether offered coverage was affordable and minimum value. An employer is considered "large" if it had 50 or more full-time or full-time equivalent employees during the prior calendar year. All employers in a controlled or affiliated service group are combined for purposes of deciding if the employer is "large," but each employer in the group must file the section 6056 report separately.

Employers with 50 to 99 full-time or full-time equivalent employees during 2014 are not subject to the employer-shared responsibility ("play or pay") requirements in 2015 if they certify on as part of the section 6056 reporting that they are eligible for the delay.* It is unclear whether some additional section 6056 reporting will be required for 2015 to validate employee applications for premium tax credits.

The large employer will need to report:

- Its name, address, and EIN
- The name and telephone number of a contact person (who can be a third party)
- The calendar year for which the information is being reported (even non-calendar year plans must report on a calendar year basis)
- A certification, by calendar month, as to whether minimum essential coverage was offered to its full-time employees (and dependents)
- The number of full-time employees for each month
- The name, address and Social Security number of each full-time employee and:
 - The months during the year that minimum value coverage was offered to the employee
 - The employee's share of the cost of self-only coverage for the least expensive minimum value plan offered to the employee, by calendar month

In addition, it is expected that employers will be required to use a series of codes to indicate:

- Whether the offered coverage met minimum value (60%)
- Whether the employee's spouse was eligible for coverage
- If a full-time employee was not offered coverage, whether the employee was excluded due to a permissible waiting period, because the employee was not full-time for the month, because the person was not employed for the month, or for another reason
- Whether the coverage met an affordability safe harbor
- The total number of employees, by calendar month
- If the employer had no full-time employees during a given calendar month

- If a member of a controlled or affiliated service group, the name and EIN of all other employers in the group
- The name, address, and EIN of anyone filing on behalf of the employer
- If a contributing employer to a multiemployer plan, whether the employee is eligible for that plan because of the employer's contributions, and the name, address, and EIN of the administrator of the multiemployer plan
- Whether coverage was offered to the employee only, the employee and children only, the employee and spouse only, or the employee, spouse, and children

Employers that offer particularly generous coverage may use alternative, simplified reporting instead of the "general" reporting explained above. Depending on the situation, the employer may be able to use alternative reporting for some employees even though it must use the general reporting method for others. The employer also may use different alternative reporting methods for different groups of employees. Three alternative methods will be available for reporting on coverage offered in 2015:

- If the employer makes a "qualifying offer" for each month in the calendar year, it can provide a certification of coverage instead of some of the demographic reporting and provide streamlined reporting to the covered employees. If the employee was not eligible for the full year, this alternative method may not be used for that employee. A "qualifying offer" is an offer that meets all of these requirements:
 - Is offered to the employee and to any spouse and dependent children
 - Provides minimum value
 - Has an employee contribution for single coverage that is less than 9.5% of the federal poverty level (FPL) in the 48 contiguous states (which would be a maximum contribution for 2014 of \$92.38 per month)
- If the employer offers affordable, minimum value coverage to at least 98% of its total employees (regardless whether they are full-time or part-time) it does not need to report whether an employee is full-time and it does not need to provide a count of its full-time employees. However, it will need to provide all of the other information required under the general method, and if an employee requests a premium tax credit, it will need to respond to an IRS inquiry about the employee's work and coverage status.
- For 2015 only, an employer that has provided a "qualifying offer" to 95% of its full-time employees, their spouses, and dependents may simply provide each of its full-time employees with a statement informing the covered employees that they will not be eligible for premium tax credits (if the qualifying offer was made for each of the 12 months of the year), or that they may be eligible for premium tax credits for any months in which a qualifying offer was not made. The statement must provide contact information for the employer. The employer transmittal will need to provide identifying information for the covered employees and affirmation that a qualifying offer was made.

The regulations acknowledge the difficulties reporting may present for employers with employees covered by multiemployer plans. The plan sponsor or administrator of the multiemployer plan may complete the 1095 form for its members and provide it to the employer to transmit with

the forms for employees not covered by the multiemployer plan. The employer is ultimately responsible for the filing. Additional details are to be provided in the instructions when they become available.

* To be eligible for the delay to 2016, the employer with 50 to 99 employees must certify that during the period beginning on February 9, 2014, and ending on the last day of the plan year that begins in 2015, it has not reduced the size of its workforce or the overall hours of service of its employees so that it could qualify for this delay, and that it has not eliminated or materially reduced any coverage it had in effect on February 9, 2014. A material reduction means that the employer's contribution is less than 95% of the dollar amount of its contribution for single-only coverage on February 9, 2014, or is a smaller percentage than the employer was paying on February 9, 2014, a change was made to the benefits in place on February 9, 2014, that caused the plan to fall below minimum value, or the class of employees or dependents eligible for coverage on February 9, 2014, has been reduced.

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