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HEALTHCARE REFORM UPDATE 2014-09



IRS Issues Drafts of Individual Responsibility Reporting Forms

The following is a summary of draft forms. Some of this information may change when final forms, and the instructions, are released.

In order for the 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 insurers will be required to provide reporting on the health coverage they offer. Reporting will first be due early in 2016, based on coverage in 2015.

On July 24, 2014, the IRS published drafts of several of the forms that will be used to provide the required reporting. Instructions were not released with the draft forms, so some questions remain unanswered. The IRS has said that it will issue drafts of the instructions in August and that the final forms and instructions will be available by the end of 2014.

Generally speaking, an employer will not have any reporting requirement if it has fewer than 50 full-time and full-time equivalent employees in its controlled group and it sponsors a fully insured medical plan. All other employers will have at least some reporting. This appears to include employers with 50 to 99 employees for 2015 -- even though the employer-shared responsibility requirement has been delayed until 2016 for most employers in this group, reporting is still needed to help determine whether individual employees owe penalties or are eligible for premium subsidies.

Employers with 50 or more full-time or full-time equivalent employees in their

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controlled group - whether the coverage offered is fully insured or self-funded - will need to complete both Part I and Part II of IRS [Form 1095-C](#). This form will be required for each employee, regardless of whether the employee is eligible for medical coverage. Part I includes basic identifying information. To complete Part I, the employer will need:

- The name, address, and Social Security number of the employee
- The name, address, employer identification number (EIN) and a contact telephone number for the employer (the contact telephone number can be that of a third party)

Part II will be used to determine whether minimum essential, minimum value and affordable coverage was offered and accepted. This data will be used to determine whether the employer owes penalties for not offering minimum essential coverage (these are sometimes referred as the "A" penalty or the \$2,000 penalty) or for not offering affordable, minimum value coverage (these are sometimes referred to as the "B" penalty or the \$3,000 penalty) and if the employee is eligible for premium subsidies.

The employer will use one of several codes to report whether it offered coverage to the employee, and the extent of the coverage it offered. If coverage did not vary during the calendar year, the employer may simply use one code to report all 12 months. If coverage varied during the year, a code is needed for each month. (Note that this reporting is made on a calendar year basis, even if the employer has a non-calendar year plan.)

The employer also will report the employee's share of the lowest cost monthly premium for self-only minimum value coverage for which the employee is eligible (not the premium for the coverage the employee elected since the contribution amount which determines affordability is the lowest cost premium for self-only minimum value coverage).

The employer also will enter codes that the IRS will use when determining if a penalty is owed. Those codes address whether the employee was eligible for coverage during the month, including whether the employee was employed, classified as full-time, in a waiting period or covered. If the employee was covered during the month, the employer will report whether coverage was affordable and which affordability safe harbor was used.

In addition, employers with self-funded plans will complete Part III of Form 1095-C. Part III information will be used to determine whether the employee's family met its requirement to have minimum essential coverage. To complete Part III, the employer will need:

- The name and Social Security number (or date of birth if a Social Security number is not available) of each covered spouse and dependent
- The calendar months each spouse or dependent child was covered (if the person was covered for the whole year, that can be reported rather than month by month reporting)

Information that is similar to the information provided on Part III of Form 1095-C will be provided by the insurer to the employee using IRS [Form 1095-B](#). Form 1095-B will report whether the employee and the employee's spouse and children had minimum essential coverage for each month. This means that an employee who works for a mid-size or large employer that provides coverage on a fully insured basis will receive two forms: Form 1095-B from the insurer and Form 1095-C from the employer. Form 1095-B also will include the origin of the policy (presumably, whether coverage is through an employer, individual insurance, a multiemployer plan, Medicare, Medicaid or the Marketplace), the name, address, and EIN of any employer sponsoring the plan and the Small Business Health Options Program (SHOP) Marketplace unique identifier if coverage is provided through the SHOP.

Employers with 50 full-time and full-time equivalent employees in their controlled group also will need to file IRS [Form 1094-C](#), with a copy of the Form 1095-C it

issued to each employee. Employers that are not part of a controlled or affiliated service group (called an ALE Aggregated Group on the form) will complete Parts I, II and III of the form. To complete these parts, the employer will report:

- The employer's name, address, EIN and the name and phone number of a contact person (who does not need to be an employee)
- The total number of Forms 1095-C submitted with the transmittal form
- Whether it is part of an ALE Aggregated Group (i.e., a controlled or affiliated service group)
- Whether the employer is exempt from some or all reporting or penalties because of its size or offer of coverage to a very high percentage of individuals
- On a month by month basis (with some ability to report for the full year if nothing changes):
 - Whether minimum essential coverage was offered
 - The total number of full-time employees of that employer
 - The total employee count of that employer
 - Whether the employer qualifies for transition relief either because it had 50 to 99 employees or because it had more than 100 employees, but is a non-calendar year plan

Employers that are part of a controlled or affiliated service group also must enter the name and EIN of all other employers that were part of the group during the calendar year. Each employer in a controlled or affiliated service group must file a separate report, although one member of the controlled group may complete the form on behalf of other members. In certain circumstances, government plans may report on a single form through a "designated government entity."

In summary, the reporting requirements are:

	Fully Insured < 50 FTEs	Fully Insured 50 to 99 FTEs	Fully Insured 100+ FTEs	Self-Funded <50 FTEs	Self-Funded 50 to 99 FTEs	Self-Funded 100+ FTEs
Form(s) to employees	1095-B	1095-B/1095-C (Parts I and II only)	1095-B/1095-C (Parts I and II only)	1095-C (Parts I, III and line 14 only)	1095-C (all Parts)	1095-C (all Parts)
Filed by	Insurer	Insurer/Plan Sponsor	Insurer/Plan Sponsor	Employer	Employer	Employer
Form(s) to IRS	1094-B	1094-B/1094-C (with copies of all 1095s)	1094-B/1094-C (with copies of all 1095s)	1094-C (with copies of all 1095-Cs)	1094-C (with copies of all 1095-Cs)	1094-C (with copies of all 1095-Cs)
Filed by	Insurer	Insurer/Plan Sponsor	Insurer/Plan Sponsor	Employer	Employer	Employer

Note: In this chart "FTE" refers to full-time or full-time equivalent employees.

The reporting will occur with the same timing and process as W-2 and W-3 reporting. The individual will receive a 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 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 basis. Because January 31, 2016, and February 28, 2016, are Sundays, employers and insurers will have until February 1, 2016, to provide the first Forms 1095 and until March 1, 2016, to file the first Form 1094 if Form 1094 is filed using paper.

Form 1095 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 (e.g., XXX-XX-1234). Substitute forms will be permitted.

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:

1. 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 in the 48 contiguous states (which would be a maximum contribution for 2014 of \$92.38 per month)
2. If the employer offers affordable, minimum value coverage to at least 98% of its total employees (regardless of 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.
3. 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.

Even though these forms are not final, employers may want to study them as they begin to determine whether they are currently collecting, and will be able to retrieve, the information needed to complete the forms.

Notes:

"Minimum essential" coverage is basic medical coverage. Coverage does not need to include the 10 essential health benefits to be considered minimum essential coverage.

"Minimum value" coverage is coverage that has an actuarial value of at least 60%.

A plan sponsor generally is the employer for employer-provided coverage and the board of trustees or committee for a multiemployer plan.

The regulations acknowledge the difficulties that reporting may present for employers with employees covered by multiemployer plans. The plan administrator of the multiemployer plan may complete Form 1095-B 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.

Employees who receive a premium tax credit/subsidy will file IRS [Form 8962](#) with their individual federal income tax return. Coverage that is obtained through a Marketplace, except for SHOP coverage, will be reported on IRS [Form 1095-A](#).

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