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Milliman

CLIENT ACTION Bulletin
Employee Benefits

IRS Releases Final Rule on Information Reporting under the ACA

SUMMARY **The IRS has published two sets of final rules on the Affordable Care Act's (ACA) information reporting requirements, providing guidance on the reporting of minimum essential coverage and of healthcare coverage. The minimum essential coverage reporting requirement under tax code section 6055 applies to employers that sponsor self-insured group health plans, group health insurance issuers, and the boards of trustees, association, or committees of multiemployer plans that provide minimum essential coverage. The healthcare coverage reporting requirement under section 6056 applies to large employers (with at least 50 full-time or equivalent workers) that are subject to the ACA's employer "shared responsibility" (also known as "pay or play") provisions. In general, the reporting entities must collect the information beginning Jan. 1, 2015, and include the information on a single, consolidated form submitted to the IRS and given to employees in 2016.**

Separately, the Centers for Medicare and Medicaid Services (CMS) released a final rule governing insurance on the exchanges in 2015, but also providing guidance on the transitional risk reinsurance program (TRRP) fee that insurance issuers and self-funded plans must pay to help offset the costs of nongrandfathered individual coverage.

DISCUSSION

Information Reporting on Minimum Essential Coverage under §6055

The reporting of minimum essential coverage information is designed to help the IRS determine whether an individual is subject to the ACA's requirement that he or she has obtained coverage (i.e., the individual mandate). Without minimum essential coverage, the individual must pay a penalty (the greater of $95 or 1% of income in 2014) unless an exemption applies.

The final rule requires any group health plan that provides minimum essential coverage to report certain information. Plans that provide only "excepted benefits" – such as stand-alone dental or vision care, most health flexible spending accounts (FSAs), employee assistance programs (EAPs) that do not provide significant medical benefits – are not subject to the reporting requirements. Arrangements – including integrated health reimbursement accounts or wellness programs – that supplement a group health plan's minimum essential coverage also are exempt.

For insured plans, the insurer must file the reports. For self-insured plans, the reporting responsibility rests with the employer (or each participating member of a controlled group), the joint board of trustees of a multiemployer plan, the labor union for a plan covering its members, and the participating employer of a multiple employer welfare arrangement (MEWA). These entities must report to the IRS and to covered individuals the following about each individual (full-time, part-time, and temporary employees, retirees, covered spouses, dependents, COBRA beneficiaries) who is *enrolled* in the plan: name, address, taxpayer identification number or date of birth, and the months during which an individual was covered for at least one day. Information also must include: the name, address, and employer identification number of the reporting entity (or the plan sponsor, if the reporting entity is the insurer); and for statements to individuals, the reporting entity's contact information (and policy number).

The first reporting period will cover the 2015 calendar year, including for noncalendar-year plans. The information must be transmitted to the IRS by Mar. 31 following the reporting year if filed electronically (and if at least 250 individual forms will be filed, electronic filing is required), and by Feb. 28 if filed by paper. Statements must be furnished to individuals by Jan. 31 following the reporting year, and may be delivered electronically only if the individuals affirmatively consent to such delivery.

Information Reporting on Healthcare Coverage under §6056

Reporting to the IRS and to plan participants is designed to help the IRS determine whether an applicable large employer must pay the penalty for not offering coverage of minimum value and whether an employee is eligible for subsidized coverage for purchasing insurance from an exchange.

The final rule requires the employer to report the healthcare coverage information. This applies whether the plan is insured or self-insured; for multiemployer plans, the employer is the reporting entity, but a plan administrator may be designated to report on behalf of contributing employers. As in the case of the minimum essential coverage reporting requirement, each member of a controlled group must comply with the healthcare coverage reporting rule. These entities must report to the IRS the following about each full-time employee who is *offered* minimum essential coverage: name, address, taxpayer identification number, and months during which coverage was available to the employee. The employer also must report information about the employer and the plan, including: name, address, employer identification number; contact information; calendar year of report; certification about the employer's offer of minimum essential coverage, by calendar month; number of full-time employees for each calendar month; and the employee's share of the lowest cost monthly premium for self-only coverage that provides minimum value.

The final rule also provides two alternative methods to report the healthcare coverage information.

The first reporting period under section 6056 is the same as under section 6055 (see above).

Penalties

In general, a failure to comply subjects an employer to penalties (for not filing correct information returns or correct payee statements) of $100 per return (up to $1.5 million per calendar year), applied separately for sections 6055 and 6056. The final rule grants limited relief for returns and statements filed in 2016 to report the 2015 information, but only for incorrect or incomplete information and the employer or insurer made a good-faith effort to comply.

Transitional Risk Reinsurance Program (TRRP) Fees

The CMS's separately issued final rule on insurance in the exchanges in 2015 provides guidance on paying the TRRP fees for 2014 and 2015 (payable in 2015 and 2016). This tax-deductible fee, which the ACA requires self-insured group health plans and insurance issuers to pay for three years (covering 2014-2016) to help pay for insurance policies in the exchanges covering individuals with high healthcare costs, applies to major medical coverage satisfying the minimum value requirements. The fee for 2016 (payable in 2017) has not been announced.

Under the final rule, the fee will not be collected from self-administered, self-insured plans (such as certain large multiemployer plans) for 2015 and 2016. To qualify for the exemption, the self-insured plan must not use a third-party administrator to process or adjudicate claims or to enroll participants.

The fee for 2014 will be $63 per covered life, and for 2015, $44. Employers and insurers will pay the fee in two installments. The first – $52.50/$33.00 per covered life in 2014 and 2015, respectively – will have to be paid by Jan. 15 following the year for which the fees are collected. The information on covered lives during the first three quarters of a reporting year must be submitted by Nov. 15 to CMS, which will send an invoice in December to the employer or insurer. The employer or insurer will be invoiced and must pay the second installment of $10.50/$11.00 per covered life in 2014 and 2015, respectively, in the fourth quarter following the reporting year.

ACTION Employers that offer group health plans or insurance should review the IRS's final rules on the ACA's reporting requirements and take steps to develop and test administrative systems to ensure compliance by the start of 2015. The IRS indicated that it will soon release the forms that will be used to report the information to the agency and to covered individuals. Plan sponsors also should review other recently issued ACA-related regulations, as some of them will have a direct bearing on plan design and administration (e.g., employer shared responsibility requirements, 90-day waiting period restrictions – see ***Client Action Bulletins 14-2*** and ***14-3***).

For additional information about the IRS's or the CMS's final rules on the ACA's reporting requirements and payment of TRRP fees, respectively, please contact your Milliman consultant.