
Final rules describe health coverage reporting requirements for 2015

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In brief

Final regulations on reporting requirements of the Affordable Care Act (ACA) give needed guidance to employers and insurers who must report to the IRS about 2015 health coverage. The reports will provide information the IRS needs to enforce both the individual mandate and the employer mandate. These reports will also enable the IRS to administer tax subsidies available to certain individual taxpayers for purchasing insurance on an exchange. Under the new regulations, employers and insurers must compile monthly information on the health coverage they offer and on covered individuals and report this information to the IRS and covered individuals. Employers generally must compile monthly information on full-time employees and their health coverage, and report this information at the end of each year to the IRS and full-time employees. Some simplified reporting will be available. The first reports must be issued early in 2016 based on 2015 health coverage. IRS forms for these reporting requirements are being developed and will be made available in the future.

In detail

Background

Under ACA's individual mandate, most US citizens and residents without health coverage that meets minimum standards—'minimum essential coverage' or MEC—may face penalties. In addition, employers with at least 50 full-time equivalent employees ('applicable large employers') may face penalties if they fail to offer MEC to full-time employees, or if the coverage offered is not affordable, minimum value coverage. These 'employer shared responsibility' or 'employer mandate' penalties are triggered if a full-time employee gets premium tax

credits to buy health insurance on an exchange/marketplace. Premium tax credits are not available to individuals who are eligible for MEC from their employers if the coverage provides minimum value and is affordable for them.

To enforce these penalties and properly administer the premium tax credits, ACA imposes two annual reporting requirements on health insurance issuers and employers. The first requirement is that issuers and self-insured employers providing MEC (regardless of employer size) must report about the MEC they provide to the IRS and to covered

individuals. Under the second requirement, applicable large employers must separately report information about their full-time employees and the coverage they offer. Like Form W-2 reporting, the general structure for these reports is for the information to be reported to the IRS on an aggregated basis along with a transmittal form, and for individuals to receive reports with the information that is relevant to or specifically about them.

The final regulations make a number of changes to last year's proposed regulations and offer simplified reporting options that may be helpful to some employers.

Observation

Reporting under Sections 6055 and 6056 is separate from and in addition to Form W-2 reporting. Employers must continue to report the cost of employer-provided coverage on the Form W-2, a requirement that has been in effect since 2012.

Reporting minimum essential coverage — Section 6055 reporting

To help the IRS enforce ACA’s individual mandate, insurers and employers maintaining self-insured health plans must report to the IRS and to all covered individuals the minimum essential coverage they

provide. This includes an information return provided to the employee or primary insured and a transmittal to the IRS.

What is Minimum Essential Coverage?

Many types of health coverage are considered MEC and must therefore be reported. The following chart lists various types of coverage and whether each type is minimum essential coverage or not.

Observation

Most employer-sponsored group health coverage, including grandfathered plans, will be considered MEC. Anyone covered on at least one day of a month under an employer-sponsored group health plan will be considered to have MEC. Employers and their vendors must be able to track and report on employees and their covered family members. Employers offering employee assistance programs that provide significant medical benefits may have to work with their EAP provider to determine reporting requirements and roles.

Minimum essential coverage	Not minimum essential coverage
Employer-sponsored self-insured coverage for active, retired or terminated employees	Excepted benefits, including stand-alone dental, stand-alone vision, fixed indemnity plans, critical illness coverage, on-site medical clinics, most health flexible spending arrangements, employee assistance programs (EAPs) that do not provide significant medical benefits
Individual or employer-sponsored group health insurance subject to State law (including coverage bought on a public exchange)	
Medicare Part A or Medicare Advantage	Health Reimbursement Arrangements integrated with group health coverage
Most Medicaid or CHIP coverage	Health Savings Accounts
Most Tricare coverage	MEC that supplements a primary plan of the same plan sponsor, or that supplements Medicare or other government-sponsored coverage
Coverage recognized as MEC by the Department of Health & Human Services (e.g., coverage provided by a foreign government, coverage provided to certain self-employed individuals or partners), provided that the sponsor complies with notice and reporting requirements.	
Certain self-insured student health coverage	

Who must file MEC reports?

Health insurance issuers must report for all insured coverage. The plan sponsor is responsible for reporting for a self-insured group health plan. The plan sponsor is the employer for a single-employer plan (determined without aggregating members of a controlled group), the employee organization for a plan maintained solely by an employee organization, or the joint board of trustees or similar group for a multiemployer plan. For other plans maintained by more than one employer, each participating employer must file on behalf of its own employees. Special rules apply for governmental employers and government-sponsored programs such as Medicare and CHIP.

Observation

Although all employee hours worked for any member of a controlled group must be aggregated for purposes of determining an employee's status as a full-time employee or an employer's status as an applicable large employer, employers and their vendors will generally have to report MEC on an employer-by-employer (e.g., EIN) basis, even if health coverage is offered by a parent company.

Who must receive a report?

The reports must be filed with the IRS, and each covered individual must receive a copy with the individual's information. The regulations do not require separate individual reports for each family member; instead a single report is to be furnished to the 'responsible individual'—the primary insured, employee, former employee or other person who enrolls one or more individuals, including him or herself, in MEC. No reports are required for individuals who are not enrolled in coverage.

What information must be reported?

The MEC reporting forms will require the following information:

- the name, address and employer identification number (EIN) of the insurer or self-insured plan sponsor
- the name, address and EIN of the employer sponsoring the plan when an insurer is reporting on an employer-sponsored group health plan, and whether the plan is enrolled through the SHOP program for small employers
- the name, address and taxpayer identification number (TIN, typically the Social Security number) of the insured or employee (the responsible individual)
- the name and TIN of each individual covered under the policy or program
- for each covered individual, the months for which the individual was covered for at least one day
- any other information required by the form and instructions.

Are we required to obtain Social Security numbers for covered dependents?

Yes, TINs must be reported for each covered individual. Issuers and plan sponsors must use existing regulations governing information returns and payee statements that provide a process for obtaining TINs. Under these rules, the reporting entity must solicit the TINs at the time the relationship with the payee is first established, and then again by December 31 of that year (January 31 if the relationship began in December). If a TIN is still not provided, a second annual solicitation

is required by December 31 of the next succeeding year. If after these efforts a TIN has still not been provided, the reporting entity may report the date of birth in lieu of the TIN for the individual.

Observation

In the context of health coverage, applying these rules means that insurers and plan sponsors should ask for Social Security numbers for all covered family members upon initial enrollment, and for at least the next two renewals or annual enrollments if Social Security numbers have not been previously provided. Entities that automatically enroll or renew coverage and do not ask for Social Security numbers on a regular basis may have to revise their processes to be able to satisfy the rules and use the birth date instead of a Social Security number.

Applicable large employer reporting — Section 6056 reporting

Employers subject to the employer mandate must report to the IRS and to all full-time employees about the coverage they provide, whether insured or self-insured. These reports are needed in order to enforce the ACA's employer mandate.

Information on the cost of the lowest-cost self-only option that provides minimum value must be reported, to help individuals and the IRS with determining an individual's eligibility for premium tax credits for insurance purchased on an exchange.

For more information on the final employer shared responsibility rules, including determining full-time employees and applicable large employers, see our Insight [Final rules on ACA's employer mandate include new transition relief](#).

What is an applicable large employer?

An applicable large employer (ALE) is an employer with 50 or more full-time (or full-time equivalent) employees in its controlled group determined using the preceding calendar year's employee demographics. Full-time employees are those employed on average at least 30 hours per week. The number of an employer's full-time equivalent employees is determined by dividing the aggregate hours of all employees who worked less than 30 hours each week by 30.

Observation

Transition rules give employers with fewer than 100 full-time employees in their controlled group an additional year before the employer mandate penalties will apply. The penalties will not apply until the beginning of the 2016 plan year for these employers if they satisfy certain requirements. These transition rules do NOT extend the reporting requirements and deadlines, however. Such employers will still file reports for 2015, and must include a certification that they meet the requirements for the transition relief, on the transmittal form to the IRS. If the employer has a non-calendar-year plan, the certification will have to be made again on the 2016 filings with respect to any months during 2016 that fall within the 2015 plan year.

Who is a full-time employee?

A full-time employee for a month is a common-law employee (not a leased employee, a sole proprietor, a partner in a partnership or a 2 percent S corporation shareholder) who works on average at least 30 hours per week in the month. The regulations under the employer mandate provide several methods for identifying full-time employees, including a month-by-month method and a lookback

method under which full-time employees are identified during a measurement period and treated as full-time or not during the following stability period based on that determination.

Observation

Because employers must be able to identify and report to all full-time employees on a monthly basis beginning with January 1, 2015, it is critical that they determine now how that identification will occur. The use of the monthly method in the employer mandate regulations may appear simplest, though the lookback method offers more certainty. In either case, employers must now be deciding on the methods to be used, and beginning to track the hours of service of all employees.

Who must report?

Once an aggregated employer is determined to be an ALE, each separate employer in the controlled group (ALE member) is responsible for reporting based on that employer's common law employees. Although the IRS will allow one member of the controlled group to do the reporting for other members of the controlled group, or will allow third parties to file on behalf of an ALE member, the liability for reporting and any penalty under the employer mandate will be assessed on a member-by-member basis.

Observation

Special rules allow reporting by multiemployer plans with respect to the full-time employees covered by a collective bargaining agreement eligible to participate in the multiemployer plan, and other rules address reporting for related government entities, although in both cases, the ALE member retains liability for reporting and shared responsibility penalties. In addition, a

disregarded entity is treated as an entity separate from its owner for purposes of the employer mandate and the reporting requirements; these rules apply to the ALE member and not its owner.

Who must receive a report?

Employers must create and file a separate return with the IRS for each full-time employee, accompanied by a single transmittal form for all of the returns filed for a given calendar year. Each full-time employee must receive a statement that includes the name, address and EIN of the employer and certain employee-specific information.

Observation

This reporting is similar to employers' Form W-2 reporting. Self-insured employers should be able to combine the MEC reporting with the large employer reporting, as described below in 'The mechanics of filing'.

What information must be reported?

Generally, each ALE member must report with respect to each full-time employee for each of the 12 months in the calendar year:

- Employer information:
 - the name, address and EIN of the employer
 - the name and telephone number of a contact person
 - the calendar year for which the report is provided
 - a certification as to whether the employer offered to its full-time employees and their dependents the opportunity to enroll in MEC under an eligible employer-sponsored plan, by calendar month

- the number of full-time employees for each month during the year
- For each full-time employee:
 - the months during the calendar year for which MEC was available to the full-time employee
 - the employee's share of the lowest cost monthly premium for self-only coverage providing minimum value offered to the full-time employee, by calendar month
 - the employee's name, address and TIN and the months, if any, during which the employee was covered under the plan
- Any other information required by the form and instructions.

Observation:

The requirement to collect and report information on a calendar month basis complicates the data collection and reporting, particularly for employers that create and maintain records on a payroll period basis.

The preamble to the regulations states that certain additional information will be required to be reported for each calendar month by the use of indicator codes on the returns. Codes will be used to indicate that:

- MEC meeting minimum value was offered, by coverage tier (e.g., self, self and spouse, family)
- coverage was not offered to the employee, and a related explanation (e.g., the individual was not employed during a month, or was not a full-time employee)
- coverage was offered to the employee for the month although

the employee was not a full-time employee

- the employee was covered under the plan
- the ALE member met one of the safe-harbors for determining the affordability of coverage under the employer mandate regulations

Additional information likely to be required on the transmittal forms will indicate:

- that the ALE member is using the transition relief under the employer mandate regulations, and any required certifications
- the total number of returns being filed
- whether an employee's effective date of coverage was affected by a permissible waiting period, by calendar month
- the total number of employees, by calendar month
- whether the ALE member had no employees for the calendar month
- the name and EIN of each other member of the aggregated group of employers of which the ALE member is a part
- if the ALE member contributes to a multiemployer plan with respect to a full-time employee, and so is not subject to penalties
- the name, address and EIN of any third party that is reporting with respect to the ALE member

What alternative reporting methods are available?

Two alternatives are provided for employers that meet specific requirements: 'qualifying offers' and '98% offers'.

Qualifying offers. Employers that can certify that a 'qualifying offer' was made to full-time employees for the entire year may provide a simplified employee statement and transmittal with respect to those full-time employees. A 'qualifying offer' is an offer of MEC providing minimum value (i.e., at least 60% actuarial value) at an employee cost for employee-only coverage not exceeding 9.5% of the federal poverty line.

Observation:

The federal poverty line for 2014 for a single individual is \$11,670, so the employee cost could not exceed \$92.39 per month (\$1,109 per year) to meet this test if it applied in 2014. The federal poverty line changes each year.

Coverage under a qualifying offer must be available to the full-time employee and the employee's spouse and dependents for all twelve months of the year. The employer must file under the general method for all full-time employees that were not made a qualifying offer for all twelve months of the year. However, for 2015 only, this alternative method may be used even for employees not receiving a qualifying offer for all twelve months of the year if the employer certifies that it made a qualifying offer to at least 95% of full-time employees and their spouse and dependents.

98% offer. The second alternative permits employers to report without identifying all full-time employees if it offers MEC providing minimum value that was affordable to at least 98% of all employees (and their dependents) regardless of whether the employee is a full-time employee. For this purpose, the employer may use any of the affordability safe harbors permitted under the employer mandate regulations. Employers using this approach would not have to identify or give a count of full-time employees for each calendar month,

but would have to provide other information.

Observation

The two alternatives should provide simplified reporting for some employers, although the requirements may be a high bar, particularly for employers that have a waiting period or that do not offer coverage to nearly all employees. Even employers able to use an alternative reporting method will have to create and retain detailed information to justify use of the simplified approach.

The mechanics of filing

What forms must be filed? When and how are they to be filed?

Entities reporting only MEC under Section 6055 will report on IRS Form 1095-B with the 1094-B transmittal form.

Observation

This stand-alone reporting on Forms 1094-B and 1095-B should only apply to self-insured employers with fewer than 50 full-time and full-time equivalent employees, and to insurance issuers and governmental entities responsible for reporting MEC.

Employers who must also report under Section 6056 as ALEs will report the MEC information along with the ALE information on Forms 1095-C and 1094-C, which will include sections for both reports.

Individuals must receive a copy of the 1095-B or -C that relates to them, or a substitute statement that includes all of the relevant information. They may be identified on these statements using an IRS truncated TIN rather than their full Social Security number.

Reports to covered individuals and full-time employees are due by January 31 of the year following the

calendar year in which MEC was provided or in which the individual was a full-time employee. They may be provided electronically if the individual has given electronic or written consent to receive the form electronically.

Observation

Employers and others providing reports will have to plan ahead to obtain consent before delivering reports to employees and covered individuals electronically. The same process for obtaining consent for electronic distribution of W-2s may be used, but an individual must specifically consent to receiving the 1095-B or -C electronically. In addition, reporting entities will want to retain evidence of consent to receive reports electronically.

Reports are due to the IRS on or before February 28 (March 31 if filed electronically) of the year following the calendar year to which the reports relate. These forms must be filed electronically if the reporting entity is required to file at least 250 Forms 1095-B or -C.

Observation

These reports are based on calendar years, not plan or fiscal years, because the individual and employer mandates apply on a calendar year basis. Although the individual mandate is in effect in 2014, reporting is optional for this year.

What are the penalties for not reporting, or for inaccurate or incomplete returns?

The penalties for not reporting will be the same as the penalties for late or incorrect reporting Forms W-2 and transmittals to the IRS. The penalty is generally \$100 per return, with a maximum of \$1.5 million. The penalties apply separately to reporting under Sections 6055 (MEC) and 6056 (ALEs). Penalties may be waived if the

failure to file timely or accurate returns is due to reasonable cause and is not due to willful neglect.

Are there any transition rules for these reporting requirements?

Yes, the IRS has said that penalties will not be enforced for 2015 reporting for any issuer or employer that has made a good faith effort to comply, but has provided incorrect or incomplete information such as TINS or dates of birth.

The takeaway

Employers who are analyzing the new regulations on the employer mandate need to consider these reporting requirements as well, and how they relate to the potential employer shared responsibility penalties. Employers considering utilizing the look-back method to identify full-time employees beginning in January 2015 must be preparing to track employees' hours of service for the measurement period beginning no later than July 1, 2014 if they have not already begun to do so. These new reporting requirements will necessitate coordination between HR and benefits departments, payroll and TPAs, as well as between different members of aggregated entities. In addition, until the actual Forms and reporting codes have been released, it will be difficult to create reporting systems and testing. All stakeholders within an organization that are involved with regulatory reporting and compliance should appreciate the risks involved in these potential ACA penalties, and work to assure compliance with the reporting rules in order to avoid the significant penalties for failure to offer coverage as required.

	MEC Reporting Forms 1094-B and 1095-B	ALE Reporting Forms 1094-C and 1095-C
Who reports	<p>Insurers, government agencies and self-insured employers of any size providing minimum essential coverage (MEC) to individuals</p> <p>NOTE these reports are combined on the C-series forms for employers who must file under both sections</p>	<p>Applicable large employers—those with 50 or more full-time equivalent employees in the controlled group during the prior calendar year</p> <p>Required for 2015 even if employer is exempt from employer mandate for 2015 (between 50 and 100 FTEs)</p>
To Whom	<p>All individuals receiving minimum essential coverage, including employees, pre-Medicare retirees, COBRA beneficiaries and covered dependents</p> <p>Separate statements not required for enrolled family members—they are to be listed on report to ‘responsible individual’</p> <p>IRS</p>	<p>All full-time employees (FTEs)</p> <p>IRS</p>
When	<p>Covered individuals – by January 31 following the calendar year of coverage</p> <p>IRS – by February 28 (March 31 if filed electronically) of 2016 for 2015 coverage with voluntary reporting encouraged for 2014 coverage</p>	<p>Employees – by January 31 following the calendar year of coverage</p> <p>IRS – by February 28 (March 31 if filed electronically) of 2016 for 2015 coverage with voluntary reporting encouraged for 2014 coverage</p>
How	<p>To covered individuals by first-class mail or electronically with participant consent</p> <p>To IRS – electronically if required to file 250 or more returns, on Form 1095-B with 1094-B Transmittal form</p>	<p>To employees by first-class mail or electronically with advance consent</p> <p>To IRS – electronically if required to file 250 or more returns, on Form 1095-C with 1094-C Transmittal form</p>
What	<p>Name, address and EIN of reporting entity</p> <p>Name, address and Social Security number (TIN) of the responsible individual (e.g., the employee)</p> <p>Name and Social Security number (or birth date if TIN not obtainable) of each covered individual (e.g., the employee’s covered dependents)</p> <p>Months of MEC for each covered individual</p>	<p>Employer identifying and contact information</p> <p>Employer certification of MEC offer to FTEs and dependents</p> <p>FTE information: months coverage was available, employee’s share of lowest cost self-only minimum value option, number of FTEs each month, Name, address, TIN of each FTE and months in which the employee was covered.</p> <p>Additional information will be required to be reported using indicator codes.</p>
Why	<p>Enforcement of individual mandate, reconciliation of individual federal subsidies</p>	<p>Enforcement of employer shared responsibility, reconciliation of individual federal subsidies</p>

Let's talk

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