



Health Care Reform Update



IMPORTANT NOTICE REGARDING HEALTHCARE REFORM **Update #60** **August, 2016**

IRS Proposes Reporting Rules with Guidance on HRA's and TIN Solicitation

The IRS has issued proposed regulations on information reporting of minimum essential coverage (MEC) by coverage providers. As background, Code § 6055 requires coverage providers (mostly insurers and employers that self-insure) to report certain information to the IRS that identifies covered individuals and their period of coverage, and to furnish a statement to the covered individuals containing the same information. The information (reported on Forms 1095-B and 1095-C, Part III) allows individuals to establish, and the IRS to verify, the months during the year when the individuals were covered by MEC for purposes of administering the individual shared responsibility provisions. The proposed regulations would generally apply for taxable years ending after December 31, 2015, and may be relied on for calendar years ending after December 31, 2013. Here are highlights:

HRA Reporting

The proposed regulations would incorporate, without substantial change, the reporting exceptions articulated in the 2015 Instructions for Forms 1094-B and 1095-B and Notice 2015-68 for individuals covered by more than one type of MEC. Examples are included in the proposed regulations to illustrate the rules.

- **Duplicative HRA Coverage:** Under this exception, coverage under a health reimbursement arrangement (HRA) or other plan that is MEC need not be reported for an individual if the reporting entity, the plan sponsor in the case of a self-insured group health plan like an HRA, provides the same individual with other MEC for which reporting is required.
- **Supplemental HRA Coverage;** Under this exception, coverage under an HRA or other plan that is MEC need not be reported for an individual if the individual is eligible for that "supplemental" coverage "only if" enrolled in other MEC that must be reported. It is not clear whether this exception is available for individuals who would be eligible for the HRA if they obtained their other MEC from another source (e.g., a spouse's employer) but who decline that opportunity and get their other MEC from the HRA sponsor.

TIN Solicitation

The proposed regulations would clarify the requirement for soliciting a taxpayer identification number (TIN) of a covered individual, and waiver of the related penalty in certain circumstances where the failure is due to reasonable cause.

- **Missing TINs:** Coverage providers are permitted to report a birth date of a covered individual if a TIN is not available after reasonable efforts are made to obtain it. According to the proposed regulations, penalties would be waived for missing TINs when a filer acts in a responsible manner by initially soliciting an individual's TIN when an account is "opened" (i.e., at the time the insurer or employer receives a substantially complete application for new coverage or to add an individual to existing coverage). If the TIN is not received, a second solicitation (i.e., the first annual



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solicitation) must be made no later than 75 days after the date on which an account was opened, or, if the coverage is retroactive, no later than 75 days after the determination of retroactive coverage is made. A third solicitation (i.e., the second annual solicitation) must be made by December 31 of the year following the initial solicitation. This solicitation process for missing TINs would be a change from the process under existing IRS rules and the modifications made in Notice 2015-68 to qualify for penalty relief. According to the preamble, filers may rely on both the proposed regulations and Notice 2015-68 until final regulations are issued.

- **Incorrect TINs:** In contrast to missing TINs, the proposed regulations would not modify existing rules for incorrect TINs. However, in applying the existing rules for initial solicitations, an account is also considered "opened" for purposes of incorrect TINs at the time an application is received for new coverage, or to add an individual to existing coverage.

NOTE: A footnote in the preamble explains that a Form 1095 validation error for a TIN and name that do not match IRS records is not a penalty notice or an indication that the filer is required to solicit a TIN. However, it is not clear whether failing to re-solicit a TIN after receiving a TIN validation error message would preclude a filer from relying on the reasonable cause penalty waiver.

For more information on this topic, please see:

Notice of Proposed Rulemaking: Information Reporting of Catastrophic Health Coverage and Other Issues Under Section 6055, 26 CFR Parts 1 and 301, 81 Fed. Reg. 50671 (Aug. 2, 2016)
Available at <https://www.gpo.gov/fdsys/pkg/FR-2016-08-02/pdf/2016-18100.pdf>

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