

The Hilltop Institute



analysis to advance the health of vulnerable populations

Overview of the March 10, 2014 Final Rule on Information Reporting of Minimum Essential Coverage

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on Information Reporting of Minimum Essential Coverage**

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Introduction

On March 10, 2014, the Internal Revenue Service (IRS) issued a final rule on *Information Reporting of Minimum Essential Coverage* (<http://www.gpo.gov/fdsys/pkg/FR-2014-03-10/pdf/2014-05051.pdf>). This document provides a high-level summary of this rule and highlights key changes to the regulations since the issue of the proposed rule.

I. Coverage Subject to Reporting

Minimum Essential Coverage

The IRS finalized regulations that require providers of minimum essential coverage (MEC) to file an information return and a transmittal on forms specified by the IRS. These reporting entities must submit information about a covered individual's MEC or exemption from the individual shared responsibility payment on an annual basis. MEC is defined in §5000A(f) as coverage under Medicare Part A, Medicaid, the Children's Health Insurance Program (CHIP), TRICARE, an employer-sponsored plan, an individual plan, grandfathered health plan, or other health benefits coverage.

Supplemental Coverage Arrangements

The IRS finalized regulations clarifying that any insurance arrangement that provided added benefits or supplemented MEC is considered supplemental coverage and would not be subject to information reporting requirements. Health reimbursement arrangements, health savings accounts, on-site medical clinics, and Medicare Part B are considered supplemental coverage. In addition, the IRS clarified that any MEC that supplements (1) a primary plan of the same plan sponsor or (2) government-sponsored coverage would be considered supplemental coverage.

II. Persons Required To Report

Self-Insured Group Health Plans

Controlled Groups

The IRS finalized regulations that delineate reporting requirements for employers that are members of a controlled group (combination of two or more corporations under common control).



- **Applicable Large Employers:** One reporting entity within a controlled group would be allowed to file and furnish statements on behalf of all reporting entities within the controlled group. Each reporting entity would still be separately liable for timely and correct reporting.
- **Not Applicable Large Employers:** Each entity would be allowed to report separately. In addition, one entity would be allowed to report on behalf of the group.

Statutory Employees

The IRS finalized regulations clarifying that a company must report self-insured group health plan coverage provided to statutory employees (individuals who are not common law employees but can be treated as employees under the Internal Revenue Code).

Small Business Health Options Program (SHOP)

Health insurance issuers are not required to report for MEC under individual market qualified health plans (QHPs) purchased through an exchange. This information reporting is already required of exchanges. However, exchanges are not required to report coverage obtained through the SHOP. As a result, the IRS finalized regulations that require health insurance issuers to report for MEC under small group market QHPs purchased through an exchange.

Government Employers

The IRS finalized regulations allowing a government employer that maintains a self-insured group health plan or arrangement to enter into a written agreement with another governmental unit, agency, or instrumentality to designate such entity responsible for MEC information reporting. The IRS reserved on the definition of agency or instrumentality for the purposes of MEC information reporting and allowed a reporting entity to make that determination based on a reasonable and good faith interpretation.

Government-Sponsored Programs

For health insurance issuers that provide coverage under a government-sponsored program, the IRS finalized regulations stating that the responsible government agency or department, and not the issuer, is the MEC reporting entity. Government-sponsored programs include Medicaid, CHIP, and Medicare (including Medicare Advantage).



III. Information Required To Be Reported

Information Not Required To Be Reported

The IRS finalized regulations that exclude certain data elements in order to minimize cost and administrative burden. The following elements are not required in reporting MEC:

- Amount of advance payments of the premium tax credits (APTCs)
- Amount of advance payments of the cost-sharing reductions (CSRs)
- Amount of the premium paid by an employer

Taxpayer Identification Numbers (TINs)

Requirement to Request TINs

The IRS finalized regulations that require reporting entities to provide the names and TINs of all covered individuals and to provide a date of birth only in cases where the TIN is not available. The reporting entity is required to make a reasonable effort to obtain the TIN before opting to provide the individual's date of birth.

Reasonable Efforts to Obtain TINs

The IRS finalized regulations that outlined conditions where it would waive penalties for failing to comply with the filing and statement requirements. The IRS would waive penalties if the failure was due to reasonable cause and not willful neglect. For example, a reporting entity would be considered to be acting in a reasonable manner if it properly solicits but does not receive a TIN from a payee. The IRS noted its intent to continue to study the issue and provide additional clarification, if appropriate, through guidance or forms and instructions.

Employer Identification Numbers (EINs)

The IRS finalized regulations that require reporting entities to list the name, address, and EIN of the plan sponsor. A health insurance issuer also must report the EIN of an employer maintaining a plan and whether coverage was obtained through the SHOP. Sponsors of multi-employer group health plans are not required to report the EINs of participating employers.

Coverage Dates

The IRS finalized regulations that require the MEC information returns to provide the months for which an individual is enrolled in and entitled to receive at least one day of benefits. The IRS noted that this reporting, on a monthly basis, would simplify compliance for the individual



shared responsibility payment, as these individuals are required to demonstrate MEC for each month of the applicable tax year.

IV. Time and Manner of Filing

Electronic Filing

The IRS proposed that reporting entities that are required to file at least 250 information returns must file electronically. The IRS finalized these regulations as proposed with an amendment to the methodology for calculating the 250 return threshold.

Corrected Returns

The IRS proposed that §6721 (failure to file correct information returns) and §6722 (failure to furnish correct payee statements) penalties would apply to entities required to report MEC. These penalties would be reduced if the reporting entity files a corrected return within 30 days of the required filing date, or makes a correction by August 1 after the reporting date. The IRS can waive penalties if the reporting entity demonstrates that such failure is due to “reasonable cause and not willful neglect.”

The IRS finalized these regulations as proposed and clarified that a reporting entity that fails to file a timely, corrected return and furnish corrected statements has filed an incomplete or incorrect return and would be subject to applicable penalties.

V. Combined Reporting

Applicable large employer members that offer self-insured MEC are required to report on health insurance coverage under both §6055 and §6056. The proposed rule allowed these large employer members to combine this reporting. In response to comments about the burden of such duplicate reporting, the IRS is finalizing regulations allowing applicable large employer members to file a combined return and statement for all reporting under §6055 and §6056.

VI. Statements Furnished to Individuals

Deceased Recipients

The IRS finalized that reporting entities must furnish a statement to each responsible individual that provides the following information:

- Name
- Address
- Contact number for the reporting entity



- Policy number
- Other information required by the IRS

The IRS defined a responsible individual as a primary insured (1) employee, (2) former employee, (3) uniformed services sponsor, (4) parent, or (5) other related person named on an application who enrolls one or more individuals, including the responsible individual, in MEC. The IRS clarified that the final regulations do not provide an exception for a covered individual who died during the year.

Time for Furnishing Statements

The IRS proposed that a reporting entity must furnish the statement on or before January 31 of the year following the calendar year in which MEC is provided. The IRS finalized these regulations as proposed with an amendment allowing reporting entities showing good cause to apply for an extension not to exceed 30 days.

Mailing Address

The IRS proposed that, if mailed, the statement required for MEC information reporting must be sent to the individual's last address or, if no permanent address is known, to the individual's temporary address. If the reporting entity has no address, it must send the statement to an address where the individual is "most likely to receive it," such as the address that the reporting entity uses for requesting or providing information about the individual's coverage.

The IRS finalized these regulations as proposed with an amendment. A reporting entity meets the requirement to furnish a statement to the individual with the reporting entity's first class mailing to the last known permanent address, or if not known, the temporary address, even if the statement is returned.

Electronic Furnishing of Statements

The IRS finalized regulations that allow statements to be electronically furnished to individuals if the recipient elects for this option. Consent to receive a statement in electronic format must be in a manner that "reasonably demonstrates that the recipient is able to access the statement in the electronic format in which it will be furnished." The IRS noted that an individual can consent and access MEC information reporting in response to a notice through a website.



Form of Statement

Information on the Statement

The IRS finalized the requirement that the statement furnished to the responsible individual must include a contact telephone number for the person required to file the return. The regulations do not prohibit designating a third party as the contact person.

Substitute Statements

The IRS finalized regulations that permit the use of a substituted statement only if it includes the information required by the IRS and complies with applicable requirements. The IRS anticipates that reporting entities would be able to check a box on the information return to report that an individual was covered for all 12 months of the calendar year.

TIN Matching Program

The IRS finalized this regulation that prohibits the TIN matching process for the purposes of MEC information reporting.

VII. Penalties

The IRS finalized the MEC reporting effective dates as proposed, applying to calendar years beginning after December 31, 2014. The IRS will not impose penalties for failure to comply for coverage offered in 2014 (filed in 2015). The IRS noted that it will not impose penalties in 2016 (for reporting coverage in 2015) for reporting entities that have made a “good faith effort” to meet information reporting requirements. Reporting entities that fail to meet reporting requirements related to MEC may be eligible for penalty relief if the reporting entity meets the standards for reasonable cause.





The Hilltop Institute

University of Maryland, Baltimore County

Sondheim Hall, 3rd Floor

1000 Hilltop Circle

Baltimore, MD 21250

410-455-6854

www.hilltopinstitute.org