Kilpatrick

AUGUST 2, 2016

ACA Reporting - Multiple Coverage and Requesting SSNs

Newly proposed IRS regulations seek to clarify certain aspects of reporting of minimum essential coverage by employers and issuers under Code Section 6055. Here, we focus on proposals that impact employer reporting (Part III of Form 1095-C). These rules do not affect Parts I and II of Form 1095-C.

No duplicative reporting required: Because the prior rules regarding reporting of duplicative minimum essential coverage (MEC) were confusing, these proposed rules clarify that:

- If an individual is covered by more than one plan providing MEC provided by the same reporting entity (the plan sponsor, for a single-employer self-funded plan), reporting is required for only one of the plans.
- If eligibility for MEC is limited to individuals who have other MEC for which reporting under Code Section 6055 is required, no reporting is required for the supplemental coverage.
- The regulations include the following examples:
  - An employer offers both a self-insured medical plan and an HRA for which it is the reporting entity. The employer only needs to report for one of these plans for each month in which the employee is enrolled in both.
  - Employer offers an insured medical plan and an HRA. Employee is eligible for the HRA only because he has enrolled in the employer's insured plan. For the months in which the employee enrolls in both, the employer does not need to report the HRA coverage because the insurer is required to report the medical plan coverage.
  - If an employer allows an employee to be covered by its HRA if the employee is covered by his spouse's employer's group health plan, the HRA will have to report because the other coverage is provided by a different employer.

Soliciting Social Security Numbers (SSN): An employer can be subject to penalties for failure to file a complete and timely Form 1095. Part III requests the SSN of each covered individual, but some employers have had difficulty obtaining this information with respect to dependents. Penalties can be waived if the employer has acted responsibly and its failure is due to reasonable cause. In particular, if an employer takes certain steps to solicit a SSN (which includes an initial request when "an account is opened" and two subsequent annual requests), it is treated as having acted responsibly for penalty purposes. Previously, Notice 2015-68 provided guidance on the requirements for soliciting SSNs and the abatement of penalties for failing to obtain this information. Employers may continue to follow the

guidance in Notice 2015-68 and the proposed rules (which include helpful transition guidance) until final regulations are issued.

Perhaps the most significant proposed changes to the current guidance relate to missing SSNs (as opposed to incorrect SSNs) and are effective for plan years ending after December 31, 2015:

- The proposed rules explain that the term "account is opened" means the date on which the employer receives an application for new coverage or to add an individual to existing coverage. The initial solicitation can be requested as part of the enrollment process.
- The first annual request must be made no later than 75 days after the date of the application for coverage (if the coverage is retroactive, no later than the 75th day after the determination of retroactive coverage is made).
- The timing of the second annual request (the 3rd request for the SSN) is unchanged: December 31 of the year following the year the account is opened. The rules also provide that second annual solicitation relates to failures on returns filed for the year immediately following the year to which the first annual solicitation relates, and succeeding calendar years.
- Relief is provided for those enrolled prior to July 29, 2016. For such enrollees, the account is considered opened on July 29, 2016, which means employers have complied with the initial solicitation as long as they requested the SSN at the time of enrollment or *at any time prior to July 29, 2016*. The first annual solicitation should be made within a reasonable period of time (75 days is considered reasonable).
- Employers who have not made a solicitation prior to July 29, 2016, should do so as soon as possible.
- For those whose coverage terminated prior to September 17, 2015, the reporting entity is deemed to be in compliance with the solicitation requirements (no further action is required).