February 19, 2013

New 2014 Federal Healthcare Coverage Reporting Requirements for Employers

New federal reporting requirements apply to employers beginning in 2014 for purposes of determining an individual's eligibility for certain federal premium and cost-sharing subsidies in connection with the purchase of exchange-based coverage. These reporting obligations are significant and will require a considerable amount of involvement by employers. Beginning in 2014, a great deal of information must be shared among and between employers, employees, health issuers, exchanges, and the IRS. Two new reporting requirements (found in new Code sections 6055 and 6056) specifically apply to employers. In addition, employers may be asked to respond to inquiries from the exchanges regarding the health coverage made available by an employer to its employees. These new reporting rules are further explained below.

Reporting of Health Insurance Coverage (Insurers and Employers That Self-Insure)
Healthcare reform requires any person who provides "minimum essential coverage" (or MEC) to an individual during a calendar year to report certain health insurance coverage information to the IRS. This reporting requirement will apply to MEC provided on or after January 1, 2014, with the first returns to be filed in 2015. The purpose of this Code section 6055 reporting appears to be to help facilitate the IRS' enforcement efforts regarding the individual mandate (i.e., the requirement that an individual taxpayer be enrolled in MEC or otherwise pay a penalty). This return may also be used to facilitate the IRS' enforcement of the employer pay or play mandate. Insurers, sponsors of self-insured plans, and other entities that provide MEC to an individual during a calendar year must comply with this reporting requirement. The return must be in the form set out by the IRS and must contain the following information:

- the name, address, and taxpayer identification number (TIN) of the primary insured, and the name and TIN of each other individual obtaining coverage under the policy;
- the dates during which the individual was covered during the calendar year;
- if the coverage is health insurance coverage, whether the coverage is a qualified health plan (QHP) offered through a health benefit exchange;
- if the coverage is health insurance coverage and that coverage is a QHP, the amount of any advance cost-sharing reduction payment or of any premium tax credit with respect to such coverage; and
- any other information required by the IRS.

In addition, if health insurance coverage is through an employer-provided group health plan, the

return must contain the following information:

- the name, address, and employer identification number (EIN) of the employer maintaining the plan;
- the portion of the premium (if any) required to be paid by the employer; and
- any other information the IRS may require to administer the new tax credit for eligible small employers.

The person who is required to report the health insurance coverage to the IRS must also furnish a written statement to each individual whose name must be included in the information return. The statement must be furnished to the covered individual on or before January 31st of the year following the calendar year for which the information was required to be reported to the IRS. This statement must include the name, address, and contact information of the reporting person, and the information required to be shown on the return with respect to that individual (as discussed above).

It is anticipated that, in the case of insured plans, the regulations would make the insurer responsible for this reporting (thus excepting employer sponsors of insured plans from this reporting requirement). However, given that employers are likely to be in a better position to know certain of the information subject to reporting (such as the social security numbers and addresses of an employee's dependents, as well as the extent of any employer premium subsidy), it seems likely that some reporting obligations may remain with employer plan sponsors. The IRS may allow for a return or written statement required under this health insurance coverage reporting provision to be coordinated with the reporting requirement for large employers (discussed below). Also, an applicable large employer subject to the reporting requirement discussed below who is offering health insurance coverage of a health insurance issuer may enter into an agreement with the issuer under which the issuer will include the information required under that reporting requirement as part of the return or written statement described in this section (i.e., for insurers or employers who self-insure).

Employer Reporting of Health Insurance Coverage (Large Employers)
An additional filing requirement applies to large employers that are subject to the pay or play mandate (employers with 50 or more full-time employees or equivalents). This reporting requirement applies to coverage provided on or after January 1, 2014, with the first returns to be filed in 2015. Each "applicable large employer" is required to file an information return reporting the terms and conditions of the healthcare coverage, if any, provided to its full-time employees (FTEs) for the year at issue. The stated purpose of this Code section 6056 reporting return is to assist the IRS in administering the "pay or play" shared employer-responsibility provisions (determining penalties for failing to provide affordable, minimum value, minimum essential coverage). The employer's return, which must be in the form be set out by the IRS, must contain the following information—

- the employer's name, date of filing, and employer identification number (EIN);
- a certification of whether the employer offers its FTEs and their dependents the opportunity to enroll in MEC under an eligible employer-sponsored plan;
- the number of FTEs the employer has for each month during the calendar year;
- the name, address, and taxpayer identification number (TIN) of each FTE employed by the employer during the calendar year and the months (if any) during which the employee and any dependents were covered under a health benefit plan sponsored by the employer

during the calendar year; and
- any other information required by the IRS.

Employers that offer the opportunity to enroll in MEC must also report—

- the months during the calendar year for which coverage under the plan was available;
- the monthly premium for the lowest cost option in each of the enrollment categories under the plan;
- the employer's share of the total allowed costs of benefits provided under the plan; and
- in the case of an employer that is an applicable large employer, the length of any waiting period with respect to such coverage.

Employers required to report health coverage to the IRS must also furnish a written statement to each of their FTEs whose name was required to be included in the report. The statement must be furnished to FTEs on or before January 31st of the year following the calendar year for which the information was required to be reported. This statement must include the name, address, and contact information of the reporting employer, and the information required to be shown on the return with respect to that individual (as discussed above).

Exchange Verification

Employers will also be required to play an active role in an exchange determining whether a given individual is eligible for an advance premium tax credit ("APTC"), including cost-sharing reductions, to assist the individual in his or her purchase of affordable exchange-based individual insurance coverage. An APTC is only available to an individual if he or she meets certain income requirements and is either not enrolled in employer-sponsored coverage, or not eligible for qualified employer-sponsored coverage (i.e., affordable, minimum value, minimum essential coverage). Although the rules are still being developed, it is certain that employers will be expected to provide exchanges with information that will allow for verification of whether an individual is eligible to receive coverage through his or her employer, and the level of coverage being offered.

Individuals will apply for APTCs through a process being developed by the Centers for Medicare and Medicaid Services ("CMS"). Application materials recently released by CMS suggest that an individual will be given a form to take to an employer asking for information about any health coverage available through his or her employer. One of the draft forms issued by CMS (see the last page in the Application Materials) asks for the employer to provide the name of the lowest cost self-only health plan available through the employer, how much the employee would have to pay in premiums for that plan, and the name of a point of contact who can answer questions about employee health coverage. Also, the regulators have discussed the possibility of creating a template which an employer could voluntarily download and populate with information regarding its coverage offerings and then distribute to employees at hiring, upon request, or on an employer intranet or benefit site. Once developed, this could be a useful tool for employers whether they decide to "pay" (in which case the document will help employees apply for and receive APTCs) or "play" (in which case the document could explain to employees why they are not eligible for APTCs).

In addition, after an individual applies for an APTC, employers may be brought into the process used by an exchange to verify if an applicant is enrolled in or eligible for qualifying coverage from an eligible employer-sponsored plan. (If they are eligible for coverage, that individual would be

disqualified from receiving an APTC even if not enrolled in the plan, provided that the plan is "affordable" and provides "minimum value"). In some cases, the exchange may contact the applicants' employers to verify whether the applicant is eligible for coverage. Exchanges will be required to provide employers with the ability to appeal a determination that the employer does not provide MEC through an employer-sponsored plan, or that such coverage is not affordable. Also, it is expected that the exchanges will contact employers to inform them of their potential liability for penalty and provide them an opportunity to respond before any liability is assessed or notice and demand for payment is made. This should provide some comfort to employers that choose to "play" but have concerns regarding how the above verification process will work. In any case, employers should expect to play an active role in connection with an exchange's determinations of an individual's APTC eligibility – whether it be through the use of voluntary attestations prior to the application process, or in connection with an exchange's audit activity in verifying these attestations after an individual's submission of an APTC application.

More guidance on these rules is expected shortly. In the meantime, employers should understand how these significant reporting obligations are likely to affect their businesses and operations. Employers should begin developing a compliance strategy now given the increased financial costs and administrative burdens, as well as the need by many employers to coordinate certain activities across payroll, tax and human resource departments. Should you have questions about this or any aspect of healthcare reform, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online Resource Center.

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