



**National
Business
Group on
Health**

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Creative Health Benefits Solutions for Today, Strong Policy for Tomorrow

November 3, 2014

Stacey Becker
Internal Revenue Service
Room 6526
1111 Constitution Avenue NW
Washington DC 20024

Re: Draft Forms 1094-C and 1095-C

Dear Ms. Becker:

The National Business Group on Health is pleased to respond to the Internal Revenue Service's comment request regarding draft Forms 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, and 1095-C, Employer-Provided Health Insurance Offer and Coverage.

The National Business Group on Health represents 395 primarily large employers, including 66 of the Fortune 100, who voluntarily provide group health plan coverage and other health programs to over 55 million American employees, retirees, and their families. Our members employ and provide health benefits for employees under a wide variety of work arrangements, including full-time, part-time, seasonal, and temporary. In addition, our members often operate multiple lines of business and tailor employee work and benefit arrangements to the specific needs of each line of business.

As our members prepare for implementation of Code sections 6055 and 6056 and other new Code provisions under the Affordable Care Act (ACA), primary concerns will be (1) minimizing the administrative and cost burdens associated with those requirements and (2) ensuring accurate information reporting to reduce erroneous assessments of employer shared responsibility payments. Allowing plan sponsors flexibility to adapt their ACA compliance procedures to existing work, benefit, and payroll arrangements will reduce these burdens and allow plan sponsors to devote more resources toward maintaining and improving health benefits for their employees. Therefore, the National Business Group on Health welcomes the Service's efforts, in implementing §§ 6055 and 6056, to minimize administrative burden and duplicative reporting. However, we also encourage the Service to clarify Forms 1094-C and 1095-C to ensure the accuracy of information used to determine individuals' eligibility for premium tax credits and employers' liability for shared responsibility payments.

In particular, we encourage the Service to take into account the plan design features typical of large, self-insured employer-sponsored plans by:

- (1) **Allowing plan sponsors flexibility to report in a manner that accommodates plans' current administrative, payroll, and recordkeeping procedures;**
- (2) **Minimizing or consolidating the number of data elements that employers must report under § 6056;**
- (3) **Allowing greater flexibility in using simplified reporting methods, particularly Form W-2 reporting.**
- (4) **Requiring multiemployer plans to provide information sufficient for contributing employers to complete Forms 1094-C and 1095-C in a timely manner;**
- (5) **Allowing greater flexibility in providing employee statements electronically;**
- (6) **Providing that employers are not required to report with respect to group health plans that provide supplemental coverage such as wellness programs, employee assistance programs (EAPs), or on-site clinics;**
- (7) **Allowing relief from applicable penalties when employers make reasonable, good faith efforts to comply with § 6056.**

We provide further discussion of these recommendations below.

I. Current Plan Administration, Payroll, and Recordkeeping

As noted above, the National Business Group on Health supports the Service's efforts to minimize the administrative burden of reporting under Code sections 6055 and 6056. To that end, we ask the Service to consider that complying with sections 6055 and 6056 will involve substantial reprogramming of payroll and recordkeeping systems and staffing resources for our members. Our members' concerns include the following:

- Our members often operate multiple lines of business and tailor plan designs to the specific needs of each line of business. Their health plans often make numerous benefit packages with different premium, coinsurance, deductible, and copayment levels available to employees. Cost-sharing levels, premiums, and coverage options may vary with employees' compensation. Many of our members currently do not maintain the information required under §§ 6055 and 6056 for all of their plans in a uniform, readily accessible format. Thus, for many of our members, providing information on offers of coverage, waiting periods, coverage months, reasons for not offering coverage, and monthly premiums for the lowest cost employee-only coverage option will involve substantial changes to administrative procedures and reprogramming of payroll and recordkeeping systems.

- In addition, many of our members who offer dependent coverage currently do not maintain names, addresses, and TINs of dependents because they offer limited tiers of coverage, such as employee only and employee-plus-family. For these members, providing information on coverage months and TINs for individual employees and dependents will involve substantial changes to administrative procedures and reprogramming of payroll and recordkeeping systems, at substantial cost.
- As noted above, our members employ full-time, part-time, seasonal, and temporary employees, and employees' eligibility for health coverage may change mid-year, such as when they shift between part-time and full-time status. Tracking and reporting coverage months for employees who have coverage for less than a full plan year, have coverage for multiple periods within a plan year, work for multiple related employers in a single plan year, or change benefit packages within a plan year will require substantial changes to administrative procedures and reprogramming of payroll and recordkeeping systems.
- Large, self-insured plans often rely on third-party administrators to conduct payroll, recordkeeping, and plan administrative functions. Therefore, these third parties often are in the best position to respond to inquiries related to employer reporting requirements. In addition, many of our members will need to engage additional third parties to assist with completing Forms 1094-C and 1095-C.
- Our members estimate that the necessary changes to administrative procedures and reprogramming of payroll and recordkeeping systems described above will require at least 6-9 months.

For the reasons described above, the National Business Group on Health recommends that:

- (A) Final regulations clearly define the data elements that employers must report on Forms 1094-C and 1095-C. For example, we recommend that instructions include the following:
 - Whether employers must report with respect to part-time employees;
 - Whether employers must report with respect to employees who receive offers of COBRA continuation coverage or who are covered through COBRA continuation coverage;
 - Whether employers must report with respect to retirees, including retiree-only health reimbursement arrangements (HRAs), Medicare Advantage, and Medicare supplement policies.

- Whether employers must report with respect to former employees who may, for example, receive offers of coverage or be enrolled in coverage under severance agreements.
- (B) Instructions for Forms 1094-C and 1095-C allow employers to list a third party as the employer contact.
- (C) The Service allow employers adequate time—at least 6-9 months—to implement necessary changes to administrative procedures and reprogramming of payroll and recordkeeping systems. A similar amount of time would necessary to implement any future changes to Forms 1094-C and 1095-C.

II. Required Data Elements

Because of the substantial time and resources that §§ 6055 and 6056 reporting will require (as described in Section I above), we recommend that to extent possible, final regulations simplify and minimize the number of data elements required on Forms 1094-C and 1095-C. For example:

- (A) Final regulations should not require members of an aggregated group to report the name and EIN of each employer member of the aggregated group. We believe this requirement is not necessary for the administration of Code §§ 4980H or 36B and may result in inconsistent reporting among members of aggregated groups.
- (B) Final regulations should not require employers to report the total number of employees by calendar month. We believe this requirement is not necessary for the administration of Code §§ 4980H or 36B and would likely result in inadvertent errors, especially with employee populations with high turnover.
- (C) Final regulations should not require employers to report TINs for spouses and dependents (for purposes of § 6055 reporting). It has been our members' experience (for example, with the Medicare Secondary Payer program and CMS's Data Match program) that obtaining TINs for these individuals is often a burdensome and costly process. Therefore, we recommend that employers be permitted to provide dates of birth instead of TINs. In the alternative, we recommend that instructions for Forms 1094-C and 1095-C state that requests for SSNs during the new hire process and plan enrollment processes constitute "solicitations" for purposes of §6055.

III. Multiemployer Plans

Multiemployer plans present unique problems for participating employers' reporting obligations under § 6056 and § 6055. Because National Business Group on Health members who contribute to these plans do not participate in the plans' administration, they do not have access to the types of information required by § 6056 and § 6055, such as eligibility rules, months that coverage is offered, waiting periods, coverage months, and identities of spouses and dependents. Even if such information were available, coordinating the information from different multiemployer plans would present a significant administrative and cost burden for employers, particularly for those who have large numbers of collectively bargained employees and therefore may contribute to many different multiemployer plans. It has been our members' experience with the Notice of Employees of Coverage Options that different multiemployer plans have substantially different methods for maintaining and reporting plan information and distributing information to plan participants, which contributing employers would have to coordinate for § 6056 and § 6055 compliance purposes. Furthermore, multiemployer plans will be in the best position to correct any errors and respond to inquiries on § 6056 and § 6055 information returns.

For the reasons above, we recommend that the Service require administrators of multiemployer plans to provide information necessary for contributing employers to complete Forms 1094-C and 1095-C in a timely manner and in an electronic format agreed upon by the plan administrator and employer.

IV. Electronic Reporting and Employee Statements

As described above, a primary concern for National Business Group on Health members will be minimizing administrative and cost burdens associated with reporting under §§ 6055 and 6056 and other ACA provisions. Because our members often sponsor multiple group health plans that are available to large populations of employees and dependents, our members view electronic reporting and disclosure as a key tool in maintaining streamlined and cost-effective reporting and disclosure procedures. Many of our members have devoted substantial resources toward providing plan-related notices and disclosures electronically—such as the summary of benefits and coverage (SBC), summary plan descriptions (SPD), the Notice to Employees of Coverage Options (Notice), and Forms W-2—and have found that many employees prefer electronic communications because the communications can be accessed at any time, often from a single location. Therefore, the National Business Group on Health recommends that final regulations simplify the rules for providing electronic employee statements under § 6056 and § 6055. Specifically, we recommend that the Service permit employers to provide § 6056 and § 6055 employee statements electronically without obtaining separate affirmative consents if they have already obtained consent with respect to another electronic plan-related notice, such as Form W-2, SPD, SBC, or Notice.

V. Supplemental Coverage (Wellness Programs, EAPs, On-Site Clinics)

In addition to the potential burdens of complying with multiple reporting requirements under the Code, we note that many of our members' employees and dependents may receive health benefits through more than one group health plan that falls within the definition of "minimum essential coverage" under Code § 5000A. For example, many of our members provide wellness programs that supplement major medical coverage. These wellness programs may offer a variety of benefits such as counseling, disease management programs, or exercise facilities. These programs may not be available to all employee populations, and where these programs are available, not all employees will use wellness program benefits. While these programs often are a part of the same group health plan that provides major medical coverage, some plan sponsors offer them through separate group health plans that may not constitute "excepted benefits" for purposes of Code § 5000A—thereby potentially triggering duplicate reporting under Code § 6056. These same concerns apply to our members who provide on-site medical clinics that provide services such as first aid, pharmacy services, or preventive health screenings that supplement major medical coverage.

To minimize duplicative reporting, we recommend that instructions for Forms 1094-C and 1095-C state that employers are not required to report with respect to group health plans that provide supplemental benefits such as wellness programs, EAPs, or on-site clinics.

VI. Relief from Applicable Penalties

As noted above, complying with §§ 6055 and 6056 will involve substantial reprogramming of our members' payroll and recordkeeping systems. It is likely that Forms 1094-C and 1095-C will include inadvertent errors, particularly in the first years of implementation. Such errors are likely to occur in situations such as mergers and acquisitions among different employers, when employers may need to transition employees from one plan and recordkeeping system to another.

In addition, employees generally must notify plan sponsors of changes in dependent eligibility due to events such as birth, divorce, or obtaining other coverage. Plan sponsors often do not receive such notification immediately—sometimes not until months after the event—which may necessitate retroactive coverage changes. These scenarios also may result in inadvertent errors in Forms 1094-C and 1095-C, particularly if events causing eligibility changes occur near the filing date.

Therefore, we recommend that the Service allow relief from applicable penalties under Code §§ 6721 and 6722, at least for the first year of implementation, provided employers make reasonable, good faith efforts to comply and correct errors within a reasonable period after discovering the errors.

NATIONAL BUSINESS GROUP ON HEALTH

Again, thank you for considering our comments and recommendations on Forms 1094-C and 1095-C. Please contact me or Steven Wojcik, the National Business Group on Health's Vice President of Public Policy, at (202) 558-3012 if you would like to discuss our comments in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Marcotte", is written over a light gray, textured rectangular background.

Brian Marcotte
President