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Legislative Compliance

Employee Benefits Legislative Compliance
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IN THIS ISSUE

IRS RELEASES MORE FORMS AND PUBLICATIONS FOR ACA REPORTING

The Internal Revenue Service (IRS) recently released Form 8809 and Publication 5223 for use in complying with the Affordable Care Act's (ACA) § 6055 and § 6056 reporting requirements. This reporting will be used to determine employer penalties for noncompliance with the employer shared responsibility mandate, individual mandate and tax subsidy eligibility for Exchange coverage. Highlights of these items can be found below.

Form 8809

- May be used to request an extension of time to file Forms 1094-C and 1095-B/C
    - A thirty day extension of time to file the 2015 Form 1094-C or 1095-B/C is available by filing Form 8809 on or before the applicable form due date
        - February 29, 2016 if filed on paper
        - March 31 if filed electronically
- One additional extension of up to thirty days is available upon filing a second Form 8809 before the end of the first extension period
    - Additional extensions may be available for extenuating circumstances

Publication 5223

- Provides instructions on how to file substitute forms for IRS Forms 1094-B, 1094-C, 1095-B, and 1095-C (substitute forms may be necessary where employers do not have Social Security numbers for the employee)

No Action Required

Employers offering coverage to their employees should become familiar with the forms and publications that will be available to ensure appropriate reporting.

For complete details, see: https://www.irs.gov/pub/irs-dft/p5223--dft.pdf; **and,** https://www.irs.gov/pub/irs-pdf/f8809.pdf

CONTACTS

Lisa R. Nelson, Esq.
Director, Employee Benefits Compliance & Regulatory Affairs, MMA West
lisan@barneyandbarney.com 858.875.3017

Christopher K. Bao, Esq.
Manager, Employee Benefits Compliance & Regulatory Affairs, MMA West
chris.bao@barneyandbarney.com 949.540.6924

CA Insurance LIC: 0H18131
www.barneyandbarney.com

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ACA SMALL GROUP MARKET EXPANSION REPEALED

On October 7, 2015, President Obama signed into law House Bill 1624, titled *Protecting Affordable Coverage for Employees Act* (PACE Act), which repeals the federal expansion of the small group insurance market to 100 employees from 50 beginning January 1, 2016. A change to the small employer definition would have subjected mid-size employers (with 51-100 employees) to the small group market rules and the Affordable Care Act's (ACA) insurance market reforms, including age-banded rates and mandated coverage for essential health benefits.

The PACE Act gives states the option of increasing the size of small employers up to 100 employees if they pass legislation affirmatively doing so. In 2012, California enacted Assembly Bill 1083 expanding the definition of a small employer from 50 to 100 effective January 1, 2016 (other states that enacted similar expansions of the small group definition include Colorado, Maryland, New York, Virginia, Vermont and the District of Columbia). Thus, mid-size employers with insurance contracts written in the above mentioned states, with 100 or fewer employees in the preceding year will be subject to the small group insurance market rules. Additionally, California enacted Senate Bill 125, adopting the ACA counting method set forth in Internal Revenue Code § 4980H(c)(2). This counting method uses the preceding year as well.

Action May be Required

Employers with 51 to 100 employees in 2014 whose insurance contracts are written in California, Colorado, Maryland, New York, Virginia, Vermont and the District of Columbia are unaffected by this change in the federal definition of small group. These states could however revise their laws and regulatory actions to conform to the federal definition. Barney & Barney will keep you informed if that occurs.

For self-funded plans and plans written in states that chose not to expand the small group definition, those mid-size plan sponsors need not prepare for the small group insurance market reforms that would have taken effect in 2016.

For complete details, see House Bill 1624 at: http://www.gpo.gov/fdsys/pkg/BILLS-114hr1624enr/pdf/BILLS-114hr1624enr.pdf

For more information on Internal Revenue Code § 4980H(c)(2), see: https://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act

IRS RELEASES PCORI FEE AMOUNT FOR 2016

The Internal Revenue Service (IRS) recently released the applicable dollar amount of $2.17, that must be used to calculate the fee imposed by §§ 4375 and 4376 for policy years and plan years that end on or after October 1, 2015, and before October 1, 2016.

The increase from the prior amount is calculated by multiplying the adjusted applicable dollar amount for policy years and plan years ending in the previous Federal fiscal year, $2.08, by the percentage increase of the projected per capita amount of the National Health Expenditures published by the Department of Health and Human Services (HHS) on July 22, 2015 (see https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/Proj2014tables.zip, Table 3). The percentage increase is calculated after adjustment to reflect updates to the data used to calculate the prior amount, $2.08, which was based on the per capita amounts of the National Health Expenditures for 2014 and 2015 published by HHS on September 3, 2014.

IRS Releases PCORI Fee Amount for 2016 (continued)

As background, section 4375 imposes a fee on the issuer of a specified health insurance policy for each policy year ending after September 30, 2012, and before October 1, 2019. Section 4376 imposes a fee on the plan sponsor of an applicable self-insured health plan for each plan year ending after September 30, 2012, and before October 1, 2019. The fee imposed by §§ 4375 and 4376 helps to fund the Patient-Centered Outcomes Research Institute (PCORI) and is calculated using the average number of lives covered under the policy or plan and the applicable dollar amount for that policy year or plan year.

Action Required

Employers with self-funded medical plans should ensure they are remitting the fees to HHS using Form 720 by July 31st for the preceding plan year. Self-funded medical plans that should be paying the fee include:

- Any self-funded major medical plan (including a self-funded high-deductible health plan)
- Applicable self-funded retiree-only plans, and
- Health Reimbursement Arrangements (HRAs) where
  - An employer maintains an integrated fully insured health plan with the same or different plan year
  - An employer maintains an integrated self-funded plan with the same plan year, but only when participants are enrolled in the HRA, but not the self-funded major medical plan; or
  - An employer maintains an integrated HRA with a different plan year than the self-funded major medical plan

For complete details, see: https://www.irs.gov/pub/irs-drop/n-15-60.pdf

DID YOU KNOW?

ACA Reinsurance Fee Counts and Payments due Soon

As a reminder, employers who have in place a **self-funded major medical plan** and use a TPA to administer the plan (this includes level funded plans), the average member count for the 2015 calendar year is due to the Department of Health and Human Services (HHS) on **November 16, 2015** (normally November 15; however, the 15th falls on a Sunday this year). That average count is to be submitted at: https://www.pay.gov/public/form/start/70746962.

Upon submittal, employers will receive an invoice from HHS, and the payment (or portion thereof) will be due by **January 15, 2016**, in the amount of **$44.00** per average number of covered lives in 2015, and may be paid to the government through the same website listed above. The payment may also be divided into two payments; the first payment in the amount of $33.00 per average number of covered lives in 2015 would be due to HHS by January 15, 2016, and the second payment would be due by November 15, 2016 in the amount of $11.00 per average number of covered lives in 2015. It is important for employers to choose a consistent counting method in order to calculate the average number of covered lives.

Employers should **not** confuse this fee with the Patient Centered Outcomes Research Institute (PCORI) Fee, which was due July 31, 2015 in the amount of $2.08 per average number of covered lives during the previous plan year. The chart below has been included to illustrate aspects of the Reinsurance Fee contributions.

Reinsurance Contributions	
Time Period of Application	Calendar years 2014 to 2016
Annual Amount	$63.00 per covered life for 2014; $44 per covered life for 2015; $27 per covered life for 2016
Party Responsible for Payment	Plan for a self-insured plan; insurer for an insured plan
Timing and Payment	Report annual enrollment count (based on the first nine months of the year) to HHS; HHS determines contribution amount and payment
Methods to Determine Covered Lives for Self-Insured Plans	Actual count, snapshot, or Form 5500 methods
Applicability to Excepted Benefits	No
Applicability to HSAs	No, but high-deductible health plan would be subject
Applicability to HRAs	No contribution if HRA is "integrated" with self-insured or insured coverage
Applicability to Retiree-Only Plans	Yes, except for participants that have Medicare as their primary payer
Applicability to EAPs and Wellness Programs	No, so long as programs do not provide "major medical coverage"
Is Payment From Plan Assets Permitted?	Yes, because payment is imposed on plan
Is Payment Deductible as Ordinary and Necessary Business Expense?	Yes

QUESTION OF THE MONTH

Q: Our company sponsors a calendar-year plan, and we changed from a fully insured health plan to a self-insured plan starting on July 1, 2015. We've always offered only one coverage option to our eligible employees. How does this change affect the payment of reinsurance program contributions for 2015?

A: When the funding arrangement changes midyear, each contributing entity (i.e., the insurer and the self-insured health plan) is responsible for paying part of that year's reinsurance program contributions, based on the portion of the year the covered lives were enrolled in the self-insured and fully insured plans. As background, reinsurance contributions, which fund reinsurance in the individual market for 2014 through 2016, are generally assessed on health insurers and self-insured group health plans providing major medical coverage. Contributing entities must self-report their enrollment counts and schedule their payments by November 15 using an online form available through the government portal, Pay.gov. The annual contribution rate for 2015 is $44 per covered life.

The annual contribution amount generally is calculated by multiplying the contribution rate by the average number of covered lives during the calendar year. (The average is calculated using enrollment data from a nine-month counting period from January through September.) However, this becomes somewhat more complex if there is a midyear change in funding mechanisms. If your company offers only one coverage option and changes from fully insured to self-insured coverage during the calendar year, the insurer of the fully insured plan is responsible for paying a prorated portion of the $44 contribution rate (based on the portion of the calendar year during which the plan was fully insured—in your case, from January 1, 2015 through June 30, 2015), multiplied by the average number of covered lives in the fully insured plan during that time period. The self-insured plan is responsible for paying a prorated portion of the $44 contribution rate (based on the portion of the calendar year during which the plan is self-insured—in your case, from July 1, 2015 through December 31, 2015), multiplied by the average number of covered lives in the self-insured plan between July 1, 2015 and September 30, 2015. Several methods are available to insured and self-insured plans for counting covered lives. Although a single contributing entity is required to use one counting method for the entire year, it appears that in your case the insurer and the self-insured health plan would not be required to use the same counting method to determine their respective contributions.

Source: Thomson Reuters/EBIA