United Actuarial Services, Inc.
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# BENEFIT NEWS BRIEFS

## *The PPACA Train Keeps On Rolling As Agencies Release Information Requests In Prelude To New Regulations*

The IRS published *Notices 2012-31, -32 and -33* seeking information on various subjects in preparation for issuing new proposed regulations under the *Patient Protection and Affordable Care Act* (*PPACA).* The Notices are available by "*clicking*" on the links: *Notice 2012-31; Notice 2012-32;* and *Notice 2012-33.*

The *Notices* are also available on the IRS' *PPACA* webpage at: *http://www.irs.gov/newsroom/article/0,,id=220809,00.html?portlet=6*.

Before discussing each *Notice* in detail, let's briefly summarize what they are about. To set the context, in addition to the many health care "reforms" affecting group health plans we have reported on previously, the *PPACA* also contains provisions attempting to expand affordable health care coverage by requiring individuals to have "*minimum essential coverage*" (the so-called "individual mandate"). Failure to have such coverage subjects an individual to monetary penalties.

While many individuals will be able to obtain *minimum essential coverage* through employer-sponsored health care plans, many regulated individuals won't be able to do so either because

(1) their employer doesn't offer coverage,

(2) the coverage is not affordable or

(3) it does not meet the "minimum value" requirements of the PPACA.

Such individuals may be eligible for tax credits to help buy coverage through the forthcoming Health Care Exchanges (Exchanges). In order to monitor which regulated individuals have minimum essential coverage, those who don't and track employer responsibilities, the IRS issued these Notices in preparation of forthcoming regulations.

Prepared by Mike Ewing, J.D.
Director of Research
United Actuarial Services, Inc.
(317) 580-8659 • Fax (317) 580-8651
email: *mewing@unitedactuarial.com*

*http://www.unitedactuarial.com*

To coordinate this vast amount of information, as well as administer the premium tax credit available to low income individuals, the IRS is beginning to take the first steps toward issuing regulations on these and other related subjects.

While only some of these developments directly affect self-insured group health plans (like multiemployer health plans), those involved in administering such plans should have a general understanding on how this multi-faceted attempt to rein in health care costs works.

Information on other employer responsibilities is available at the aforementioned link to the IRS webpage. Like other sections of the *PPACA*, it is not clear how the below discussed *Notices* will be applied to multiemployer group health plans, due to their unique nature. In fact, comments are requested on the application to multiemployer group health plans of some of the new requirements. Until proposed regulations are issued, application to multiemployer group health plans is undefined.

Beginning in 2014, certain employers must offer health coverage to their full-time employees or a shared responsibility payment may apply. Information may also be found in IRS news releases *IR-2011-92* and *IR-2011-50* and *Notices 2011-73* and *2011-36*. Additionally, *Notice 2012-17* provides answers to frequently asked questions from employers regarding automatic enrollment, employer shared responsibility and waiting periods.

## Brief Summary of Notices

***Notice 2012-31*** requests comments on several possible approaches to determining whether health coverage under an eligible employer-sponsored plan provides "*minimum value"*. A plan provides *minimum value* if "the plan's share of the total allowed costs of benefits provided under the plan is at least 60% of such costs." If the coverage offered by the employer fails to provide *minimum value*, an employee may be eligible to receive a premium tax credit. A large employer (defined as an employer who employed an average of at least 50 full-time employees on business days during the preceding calendar year) may be liable for an a$$e$$able payment if any full-time employee receives a premium tax credit.

***Notice 2012-32*** requests comments on the new reporting requirements under Section 6055 of the Code, as added by Section 1502(a) of the *PPACA*. The new reporting requirements require health insurance issuers, government agencies, employers that sponsor self-insured plans, and other persons that provide minimum essential coverage to an individual to report such information to the government as part of the overall implementation of the individual mandate requirement of the *PPACA*.

***Notice 2012-33*** requests comments on reporting under Section 6056 of the Code for large employers. Section 6056 requires reporting of certain information on employer-provided health care coverage and the furnishing of related statements to employees. The IRS will use this information to verify employer-sponsored coverage. This Notice requests comments on possible approaches for coordinating and minimizing duplication between the information required to be reported and

furnished by employers under Section 6056 and information required to be reported and/or furnished by employers or other persons under other Code provisions.

## A Detailed Look at The Notices and Requests for Comments

### *Notice 2012-31*

This Notice describes and requests comments on several possible approaches to determining whether health coverage under an eligible employer-sponsored plan provides *minimum value*. A plan provides *minimum value* if "the plan's share of the total allowed costs of benefits provided under the plan is at least 60% of such costs."

Beginning in 2014, eligible individuals who purchase coverage under a qualified health plan through an Affordable Insurance Exchange may receive a premium tax credit unless they are eligible for other *minimum essential coverage*, including coverage under an employer-sponsored plan that is *affordable to the employee* and *provides minimum value*. A large employer may be liable for an a$$e$$able payment if any full-time employee receives a premium tax credit.

The IRS intends to issue proposed regulations on determining *minimum value* and is considering the approach described in this Notice. Under anticipated future guidance, an employer-sponsored plan (presumably including a multiemployer group health plan) would be able to use one of several alternative approaches to determine if the health plan provides *minimum value*. *Notice 2012-31* requests comment on three potential approaches that could be used to determine whether an employer-sponsored plan provides minimum value:

- The actuarial value calculator (AV calculator), or a minimum value calculator (MV calculator) to be made available by the government. The calculator would permit an employer-sponsored plan to enter information about the plan's benefits, coverage of services, and cost-sharing terms to determine whether the plan provides minimum value. The data underlying the MV calculator (which would be designed for use by employer-sponsored self-insured plans and insured large group plans) are expected to be claims data reflecting typical self-insured employer plans.

- An array of design-based safe harbors in the form of checklists that would provide a simple, straightforward way to ascertain that employer-sponsored plans provide minimum value without the need to perform any calculations or obtain the assistance of an actuary.

- For plans with nonstandard features that preclude the use of the AV or MV calculator without adjustments, an appropriate certification by a certified actuary, in accordance with prescribed continuance tables, recognized actuarial standards, and other conditions that may be prescribed in administrative guidance, that the plan provides minimum value.

Section VI of the *Notice* describes these potential approaches in greater detail. A copy of the comments requested as listed in this *Notice* is available by "*clicking here.*"

***Notice 2012-32***

This *Notice* requests comments on the new reporting requirements under Section 6055 of the Code, as added by Section 1502(a) of the *PPACA*. The new reporting requirements require health insurance issuers, government agencies, employers that sponsor self-insured plans, and other persons that provide minimum essential coverage to an individual to report such information to the government as part of the overall implementation of the individual mandate requirement of the *PPACA*.

The reporting requirements apply to coverage provided on or after January 1, 2014, with the first information returns filed in 2015. As a prelude to issuing proposed regulations the IRS is requesting comments. A copy of the comments requested as listed in this *Notice* is available by "*clicking here.*"

Code Section 6055(a) requires every health insurance issuer, sponsor of a self-insured health plan, government agency that administers government-sponsored health insurance programs and other entity that provides "*minimum essential coverage*" to file annual returns reporting information for each individual for whom *minimum essential coverage* is provided. If health insurance coverage is provided by a health insurance issuer and consists of coverage provided through a group health plan of an employer, it is anticipated that the regulations would make the health insurance issuer responsible for the reporting.

"*Minimum essential coverage*" is defined by the *PPACA* to include health insurance coverage offered in the individual market (such as a qualified health plan through an Affordable Insurance Exchange (Exchange)), an eligible employer-sponsored plan, or government-sponsored coverage such as Medicare, Medicaid, the Children's Health Insurance Program, TRICARE or veterans' health care.

The required information returns reporting minimum essential coverage must contain:

(1) the name, address and taxpayer identification number of the primary insured and each other individual covered under the policy or plan,

(2) the dates each individual was covered under minimum essential coverage during the calendar year,

(3) in the case of health insurance coverage, whether the coverage is a qualified health plan offered through an Exchange,

(4) if the coverage is a qualified health plan offered through an Exchange, the amount (if any) of any advance payment of the premium tax credit or of any cost-sharing reduction under the PPACA for each covered individual, and

(5) any other information that is required.

The information return for minimum essential coverage provided by a *health insurance issuer* through an employer's group health plan also includes the name, address, and employer identification number of the employer maintaining the plan,

the portion of the premium to be paid by the employer, and any other information that the Secretary may require for administering the tax credit employee health insurance expenses of small employers.

The entity required to file an information return reporting minimum essential coverage must also furnish a written statement to each individual listed on the return that shows the information that must be reported to the IRS for that individual.

Special reporting rules effective for years beginning after 2013 for applicable large employer are discussed in detail under the Section herein on *Notice 2012-33*.

***Notice 2012-33***

This *Notice* requests comments on reporting under Section 6056 of the Code for large employers. Section 6056 requires reporting of certain information on employer-provided health care coverage and the furnishing of related statements to employees. The IRS will use this information to verify employer-sponsored coverage. This *Notice* requests comments on possible approaches for coordinating and minimizing duplication between the information required to be reported and furnished by employers under Section 6056 and information required to be reported and/or furnished by employers or other persons under other Code provisions. A copy of the comments requested as listed in this *Notice* is available by "*clicking here.*"

The Notice gives some background on this reporting requirement, which includes reports to the IRS and to employees.

Reporting to the IRS

Effective for years beginning after December 31, 2013, Code Section 6056(a), directs every applicable large employer that must meet the shared employer responsibility requirements during a calendar year to file a return with the IRS that reports the terms and conditions of the health care coverage provided to the employer's full-time employees for the year.

The return used to satisfy these reporting requirements must:

(1) Include the name and Employer Identification Number (EIN) of the applicable large employer;

(2) Include the date the return is filed;

(3) Certify whether the applicable large employer offers its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan and,

(4) if so, certify

- The duration of any waiting period (as defined in Section 6056(b)(2)(C)) with respect to such coverage;
- The months during the calendar year when coverage under the plan was available;
- The monthly premium for the lowest cost option in each enrollment category under the plan; and
- The employer's share of the total allowed costs of benefits provided under the plan.

(5) Report the number of full-time employees for each month of the calendar year;

(6) Report, for each full-time employee, the name, address, and taxpayer identification number (TIN) of the employee and the months (if any) during which the full-time employee (or any dependents) were covered under the eligible employer-sponsored plan; and

(7) Include such other information as may be required.

Reporting to Employees

Code Section 6056(c) provides that, no later than January 31, 2014, an applicable large employer will furnish to each full-time employee whose information is required to be reported to the IRS under Code Section 6056(b) a written statement that includes:

(1) The applicable large employer's name and address;

(2) The applicable large employer's contact information (including a contact phone number);

(3) The information relating to coverage provided to that employee (and dependents) that is required to be reported on the Section 6056 return.

## Related *Bulletin* Released By CIIO

In addition to these IRS Notices, the *Center for Consumer Information and Insurance Oversight (CIIO)* issued a *Bulletin* relating to *Verification of Access to Employer-Sponsored Coverage*. The *Bulletin* is available by "*clicking here*" or at: *http://cciio.cms.gov/resources/files/exc-verification-guidance-vach.pdf.*

This *Bulletin* contains an information request and proposed strategy to verify whether an individual has employer-sponsored health care coverage available. While multiemployer plan coverage was not discussed, it would seem that in the multiemployer universe that verification of access might be routed through the

multiemployer plan instead of individual contributing employers. If not, contributing employers and the plan would need to coordinate such information if it is to be provided by a contributing employer and not the multiemployer plan.

According to the *Bulletin*, verification of access to employer-sponsored coverage is a necessary part of the process for determining eligibility for advance payments of the premium tax credit available to support the purchase of qualified health plans through Affordable Insurance Exchanges (Exchanges). The purpose of the *Bulletin* is to request comment from the public on a proposed interim strategy for verification of an applicant's access to qualifying coverage in an employer-sponsored plan.

Under the proposed interim approach, an individual requesting an eligibility determination for advance payments of the premium tax credit must attest to whether he or she has access to affordable employer-sponsored coverage that meets minimum value standards, and whether he or she reasonably expects to be enrolled in such coverage during the months in which he or she plans to seek coverage through the Exchange.

Under this proposed approach, an Exchange would manually verify employer-sponsored coverage information for a selection of applicants. HHS stated it believes that this could necessitate direct contact with employers by Exchange staff for those employees determined eligible for advance payments of the premium tax credit. HHS recognizes that post-enrollment screening is a resource-intensive endeavor and believes that an employer could expect fewer contacts of this nature if information that enables pre-enrollment verification is provided to employees, Exchanges or any potential database in advance of application filing.

HHS is exploring whether and how the Federal government could manage or facilitate services for verification of access to employer-sponsored coverage. For example, HHS could provide opportunities for employers to voluntarily submit information directly to one or more private or public databases that an Exchange might access for the purposes of verification.

* * *

While these are interesting developments, the topic on everyone's mind is more likely to be whether the *PPACA* will survive the Supreme Court's expected June ruling. Whatever one thinks of the *PPACA*, it is undoubtedly a tremendous expansion of government involvement in nearly every business and home across America.