



## BENEFIT NEWS BRIEFS

### *IRS Releases New Reporting Forms*

#### *Filing Not Due Until 2016, But Recordkeeping Needed Now*

The *Affordable Care Act (ACA)* added various reporting requirements for health plans, employers and health plan sponsors including Sections 6055 and 6056 of the Internal Revenue Code. The IRS has recently released final forms and instructions for Section 6055 and 6056 reporting. The proposed Forms and Instructions were discussed in [Benefit News Briefs 2014-46](#). Links to the final Forms and Instructions are provided at the end of this publication. The new final Forms are Forms 1094-B and 1095-B, and Forms 1094-C and 1095-C.

Forms 1094-B and 1095-B are used for Section 6055 reporting [*reporting of minimum essential coverage*] and Forms 1094-C and 1095-C are used for Section 6056 reporting [*reporting of coverage by large employers; >50 full time employees (FTEs)*]. [Form 1095-A](#) is provided to individuals with [Marketplace coverage](#).

**The Board of Trustees of a multiemployer group health plan is required to file Forms 1094-B and 1095-B for individuals for whom contributions are made to the multiemployer plan.**

*Source: 2014 Instructions for Forms 1094-B and 1095-B, page 1, lower right column. "other plan sponsors (such as sponsors of multiemployer plans) report the coverage on Form 1095-B"*

**NOTE: The 1094-B/1095-B and 1094-C/1095-C forms are NOT required to be filed *until 2016* to report on coverage offered in 2015.**

Forms 1094-B (transmittal) and 1095-B (return) and Forms 1094-C (transmittal) and 1095-C (return) must first be filed with the IRS on or before February 28 (March 31, if filed electronically) of the year following the calendar year of coverage. The first filing for a calendar year plan will be February 28, 2016 (March 1, 2016, if filed electronically); however, recordkeeping will be required in 2015 for that 2016 filing deadline.

We will take a look at these new forms and instructions concentrating on the forms plan sponsors (the trustees) of multiemployer group health plans must file and how large employers ( $\geq 50$  FTEs) who contribute to a multiemployer group health plan report that coverage.

### **Section 6055 Reporting – IRS Forms 1094-B and 1095-B**

---

Section 6055 requires every “person” that provides [minimum essential coverage](#) to an individual during a calendar year must file an information return and a transmittal. Such “persons” would include employers of all sizes, not just employers with over 50 full-time employees as applies to Forms 1094-C and 1095-C. The plan sponsor (trustees) of a multiemployer health plan is also such a “person” and, as mentioned earlier, must file the 1094-B and 1095-B forms to report on who is covered under the plan.

As noted, the IRS recently published final [Instructions for these 1094-B/1095-B Forms](#). The information reported on this Form under Section 6055 is used by the government and individuals to determine if an individual fulfills his [individual shared responsibility provision](#) under the ACA and had minimum essential coverage. Failure for an individual to obtain minimum essential coverage results in the individual being liable for the [individual shared responsibility payment](#).

Other entities besides the trustees of multiemployer health plans will use Forms 1094-B and 1095-B for Section 6055 reporting, such as [small employers](#) of self-insured plans and insurers of insured plans in the individual or group employer-sponsored insured health plan market.

### **Section 6056 Reporting – IRS Forms 1094-C and 1095-C**

---

Employers with 50 or more FTEs (applicable large employers (“ALEs”)) will use Forms 1094-C and 1095-C to report the information required under Section 6056 about offers of health coverage and enrollment in health coverage for their employees. This information will be used to determine if an ALE meets its [employer shared responsibility](#) obligations to offer health care coverage meeting certain standards.

Special transition rules apply to ALEs offering health coverage to any of its employees through a [multiemployer](#) health plan. In such a case, the ALE will not include such employees on Form 1095-C, Part III. The Trustees of the multiemployer plan providing the coverage will file information about the covered employees using Forms 1094-B and 1095-B. Source: *2014 Instructions for Forms 1094-C and 1095-C. page 1, right column, bottom of page, last paragraph and continuing on to top of page 2.*

*Self-insured employers have various reporting options for reporting any employees covered under its self-insured health care plan on Forms 1094-C and 1095-C. The instructions require close reading.*

## Multiemployer Transition Relief Continues

The Interim Guidance Regarding Multiemployer Arrangements is discussed in the [Instructions to the Forms 1094-C and 1095-C \(PDF page 11\)](#). An employer is treated as offering health coverage to an employee if the employer is required by a collective bargaining agreement or related participation agreement to make contributions for that employee to a multiemployer plan that offers, to individuals who satisfy the plan's eligibility conditions,:

- a) health coverage that is affordable and provides minimum value, and
- b) that also offers health coverage to those individuals' dependents or is eligible for the Section 4980H transition relief regarding offers of coverage to dependents.

For more information, see Section XV.E of the preamble to the [final Section 4980H regulations \(PDF page 34\)](#).

## The HIPAA Privacy Rule and Disclosure of PHI to Contributing Employers

The reporting forms contemplate some type of sharing of enrollment/disenrollment information between the plan and large contributing employers who will need to be able to use the multiemployer transitional relief. Enrollment and disenrollment information is protected health information (PHI) and its release by the Plan/Plan Sponsor is governed by the *HIPAA Privacy Rule*. See, [Preamble to Final Privacy Rule, 67 FR 53182, 53207-08 \(August 14, 2002\) \(PDF page 27\)](#)

Fortunately, it appears that the release of such PHI would be allowable under the "required by law" exception to a covered entity releasing such PHI. *Privacy Rule* regulation 45 CFR 164.512(a)(1) states:

"A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law." (emphasis added)

The term "*Required by law*" is very broadly defined at 45 CFR 164.103:

"*Required by law* means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. *Required by law* **includes, but is not limited to**, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and **statutes or regulations that require the production of information**, including statutes or regulations that require such information if payment is sought under a government program providing public benefits."

The *Preamble* to the *Final Privacy Rule* noted that the definition of "required by law" applies to a requirement under law that compels any entity, not just a covered entity, to make a use or disclosure of PHI. See, *Preamble* at 67 FR 53182, 53208.

Courts interpreting the “required by law” exception have cited the *Preamble* to the regulations and construed the term broadly. See, [Ohio Legal Rights Service v. Buckeye Ranch](#), 365 F.Supp.2d 877 (S.D. Ohio 2005); [Protection & Advocacy System, Inc. v. Freudenthal](#), 412 F.Supp.2d 1211 (D. Wyoming 2006) and [State ex rel. Cincinnati Enquirer, v. Daniels](#), 108 Ohio St.3d 518 (S. Ct Ohio 2006).

As such, the “required by law” exception would appear to allow the disclosure of enrollment/disenrollment information to employers who are “required by law” to report their offers of coverage and/or use of the multiemployer transition relief. Further discussion in the relationship of the *Privacy Rule* to other state and federal laws is found in the [Privacy Rule Preambles at 67 FR 53208, 65 FR 82481-82; 82485, 82598; and 82666-68](#).

The Office of Civil Rights website also has further information on the “required by law” exception. Multiemployer group health plans and sponsors should check with Fund Counsel for legal guidance on these and any other *ACA* and/or *Privacy Rule* concerns.

\* \* \*

## Resources:

---

### *IRS*

[Instructions for Forms 1094-B and 1095-B](#)

[Form 1094-B, Transmittal of Health Coverage Information Returns](#)

[Form 1095-B, Health Coverage](#)

[Instructions for Forms 1094-C and 1095-C](#)

[Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns](#)

[Form 1095-C, Employer-Provided Health Insurance Offer and Coverage Insurance](#)

[Text of IRS Publication 5196: Getting Ready -- Monthly Tracking](#)

### *Research Department*

[Benefit News Briefs 2014-15 - Final Code Section 6055 ACA Reporting Regulations](#)

[Benefit News Briefs 2014-30 - Section 6055 reporting, TIN update](#)

[Benefit News Briefs 2014-18 - Final Code Section 6056 ACA Reporting Regulations](#)

**LEGAL DISCLAIMER:** Information contained in this publication is not legal advice, and should not be construed as legal advice. If you need legal advice upon which you can rely, you should seek a legal opinion from your attorney.