

CLIENT ALERT

April 15, 2014

IT'S TIME TO GEAR UP FOR EMPLOYER REPORTING UNDER THE PATIENT **PROTECTION AFFORDABLE CARE ACT**

The Department of Treasury has published final regulations addressing the employer reporting requirements under sections 6055¹ and 6056² of the Internal Revenue Code (the "Code") enacted by the Patient Protection and Affordable Care Act ("PPACA"). These reporting requirements consist of an Internal Revenue Service ("IRS") filing requirement and an employee information statement requirement. Reporting has been delayed one year and becomes effective in 2015 with the first report due in 2016. While these dates seem far in the future, employers need to begin preparing now for these new reporting requirements.

Who must report? The section 6055 reporting requirements apply to the employer with respect to a self-insured medical plan, and to the insurer with respect to an insured medical plan. Special rules apply to governmental units and multiemployer plans. The section 6056 reporting requirements apply to applicable large employers ("ALE's") that are subject to the employer mandate (i.e., members of a controlled group that employs 50 or more full-time employees and/or full-time equivalent employees).

For reporting under section 6055, each controlled group member is required to report for its employees; however, one member may elect to file on behalf of the group (although each member remains responsible and liable for such reporting).³

Most employers who sponsor self-insured medical plans will be ALE members and required to report under both sections 6055 and 6056. The final regulations simplify the reporting process for ALEs by permitting them to file a single return and provide a single statement to comply with both reporting requirements.⁴ In addition, the regulations provide various simplified methods of reporting for ALE members. Finally, the regulations clarify that ALEs

¹ Section 6055 requires reporting by all health plans that provide minimum essential coverage ("**MEC**") for purposes of enforcing the individual mandate. Excepted benefits, such as limited scope dental or vision coverage, health flexible spending arrangements and health reimbursement arrangements that supplement the employer's primary plan are not subject to such reporting.

² Section 6056 requires applicable large employers to provide the Internal Revenue Service ("IRS") and all full-time employees' information about the health coverage they offer for purposes of determining the employer's compliance with the employer mandate and an employee's eligibility for a premium tax credit. While the determination of ALE status is done on a controlled group basis, section 6066 reporting is required separately for each controlled group member. Thus, an employer who has less than 50 full-time and full-time equivalent employees, but is part of a controlled group that employs at least 50 of such employees will be required to report under section 6056 with respect to its own full-time employees.

Such reporting will be made on IRS Form 1094-B and Form 1095-B

⁴ Such reporting will be made using IRS Form 1095-C and 1094-C (transmittal form). If the ALE has an insured plan, then it will complete only the part of the form requiring information under section 6056.

¹²⁰⁰¹ NORTH CENTRAL EXPRESSWAY . SUITE 1150 . DALLAS, TEXAS 75243 . 214.736.8888 MCCOMBS PLAZA • 755 E. MULBERRY AVE., SUITE 200 • SAN ANTONIO, TX 78212 • 210.702.3954 WWW.WIFILAWGROUP.COM

may use third parties, such as third party administrators, to file returns and provide employee information statements (although the ALE remains responsible and liable for such filing). However, if an ALE uses more than one third party, or does individual reporting with respect to some employees and third party reporting with respect to others, there must only be one employee report (Form 1095-C) and transmittal form (Form 1094-C) filed reporting aggregate data for all full-time employees of the ALE member.

- ▶ When are the IRS returns due? The section 6055 and 6056 returns must be filed with the IRS by February 28 (or March 31 if filed electronically) of the year following the calendar year to which they relate. Electronic filing is required, except for an ALE member filing fewer than 250 returns (required under sections 6055 and 6056) (i.e., one return is due for each employee so only employers with less than 250 employees will be exempt from this requirement).
- ▶ When is the written statement required to be furnished? Written statements must be provided to employees no later than January 31 of the year following the calendar year in which coverage was provided. The statement may be provided electronically, provided that the employee consents to receive the form electronically. If the statement will be provided in paper form, sending the statement via first class mail to the employee's last known address will satisfy the rules. The statement may be sent with the employee's Form W-2.

ACTION ITEMS

- Determine what reporting requirements apply. Employers should determine which reporting requirements apply to them and their plans. While much of the information required by section 6055 and 6056 is duplicative, there are differences and employers should familiarize themselves with the requirements so they know what information they must provide and, if necessary, implement steps to start collecting that information now.⁵
- Determine who will be responsible for complying with the reporting requirements. Complying with the reporting requirements will involve coordinating internal and external resources which may not be used to working together. For example, the human resources department may usually take ownership of all health plan related items, but it may not be the appropriate department for preparing and filing tax and information returns. Similarly, employers with more than one third party administrator, or who have insured and selfinsured plans, will need to coordinate the reporting with those entities. Finally, employers

⁵ Section 6055 requires reporting of the employee's name, address and tax identification number ("**TIN**"), the name, address and TIN (or date of birth if TIN is not available) for each covered individual, the months an individual was enrolled and entitled to receive benefits, and any other information required by the IRS. Group health plans must also provide the name, address and employer identification number ("**EIN**") of the plan sponsor and whether the coverage is Small Business Health Option ("**SHOP**") coverage and, if so, a SHOP identifier. Section 6056 requires reporting of the name, address and EIN of the employer, the name and telephone number of the employer's contact person, the calendar year for which the information is reported, certification of whether the employer offered its full-time employees and dependents the opportunity to enroll in MEC, the months during the year MEC was available, each full-time employees for each month during the calendar year, the name address and TIN of each full-time employee during the year and the months, if any, during which the employee was covered under the plan and any other information required.

with large plans or with limited internal resources may need to outsource the reporting, which will require finding a vendor and entering into an outsourcing agreement.

Please contact Linda Wilkins LWilkins@wifilawgroup.com, Felicia Finston FFinston@wifilawgroup.com, Jay Friedman JFriedman@wifilawgroup.com, Misty Leon MLeon@wifilawgroup.com, Diane Cooper DCooper@wifilawgroup.com. Kathy Kull KKull@wifilawgroup.com, or Laura Irani LIrani@wifilawgroup.com if you have questions or need assistance with your section 6055 and 6066 reporting obligations.

IRS Circular 230 Disclosure: To the extent this communication contains any statement regarding federal taxes, that statement was not written or intended to be used, and it cannot be used, by any person (i) as a basis for avoiding federal tax penalties that may be imposed on that person, or (ii) to promote, market or recommend to another party any transaction or matter addressed herein.