

Information Reporting on Minimum Essential Coverage Under a Catastrophic Plan

Notice 2017-41

PURPOSE

Currently, no reporting is required with respect to coverage under a catastrophic plan (described in § 1302(e) of the Patient Protection and Affordable Care Act, Public Law 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, 124 Stat. 1029 (2010) (collectively, the Affordable Care Act)) enrolled in through an Affordable Insurance Exchange (Exchange, also called a Marketplace). Guidance applicable for 2015 and 2016 coverage provided that health insurance issuers could voluntarily report coverage under a catastrophic plan enrolled in through an Exchange. This notice extends issuer voluntary reporting for 2017 coverage under a catastrophic plan enrolled in through an Exchange.

Accordingly, issuers may, but are not required to, report 2017 coverage under a catastrophic plan enrolled in through an Exchange. Issuers reporting coverage under a catastrophic plan are not subject to information reporting penalties under §§ 6721 and 6722 of the Internal Revenue Code (Code) with respect to returns and statements voluntarily filed and furnished under this notice.

Issuers may rely on this notice to voluntarily report coverage under a catastrophic plan enrolled in through an Exchange for coverage years after 2017 to the extent final

regulations requiring issuer reporting of coverage under a catastrophic plan enrolled in through an Exchange are not applicable.

BACKGROUND

Section 1302(e) of the Affordable Care Act provides for catastrophic plans. These plans are minimum essential coverage and qualified health plans, may be offered only in the individual market, and may be enrolled in through an Exchange, but taxpayers may not claim the premium tax credit for this coverage. See § 36B(c)(3)(A) of the Code.

Under § 5000A of the Code, individuals who do not qualify for a health coverage exemption have the choice to either maintain minimum essential coverage or make an individual shared responsibility payment.

Section 6055 of the Code and § 1.6055-1(a) of the Income Tax Regulations require all persons providing minimum essential coverage (such as issuers) to file annual information returns with the Internal Revenue Service (IRS) reporting certain information, including information that identifies each covered individual and the months of coverage. Section 6055 and § 1.6055-1(g) also require persons providing minimum essential coverage to furnish a statement to the responsible individual (generally, the person named on an application who enrolls one or more individuals, including him or herself, in minimum essential coverage) containing the same information that is included on the information return required to be filed with the IRS. This reporting allows individuals to establish (and the IRS to verify) that they have minimum essential coverage and, therefore, are not liable for the individual shared responsibility payment under § 5000A.

Section 36B allows a premium tax credit to eligible individuals who enroll or enroll a family member in a qualified health plan (other than a catastrophic plan) through an Exchange. Under § 36B(f)(3), Exchanges must report to the IRS information relating to qualified health plans in which individuals enroll through the Exchange, and furnish annual statements to individuals regarding this information. See also § 1.36B-5(a) and (f) of the Income Tax Regulations. For purposes of reporting by Exchanges under § 36B(f)(3) on coverage in a qualified health plan, the term “qualified health plan” has the same meaning as in § 1301(a) of the Affordable Care Act, except that it does not include a catastrophic plan described in § 1302(e) of the Affordable Care Act. See § 1.36B-1(c). Accordingly, Exchanges are not required to report coverage under a catastrophic plan enrolled in through the Exchange.

Currently, under the § 6055 regulations, issuers are not required to report any coverage under a plan, including a catastrophic plan, enrolled in through an Exchange. Specifically, § 1.6055-1(d) provides that issuers are not required to report on coverage in a qualified health plan in the individual market enrolled in through an Exchange because that information is generally reported by Exchanges under § 1.36B-5. Thus, currently neither the Exchanges nor issuers are required to report coverage under a catastrophic plan enrolled in through an Exchange.

Effective administration of § 5000A requires reporting of all types of minimum essential coverage, including coverage under catastrophic plans enrolled in through an Exchange. Accordingly, on September 16, 2015, the Department of the Treasury (Treasury Department) and the IRS issued Notice 2015-68, 2015-41 I.R.B. 547, which

stated our intent to propose regulations under § 6055 to require issuers of catastrophic plans to report catastrophic plan coverage on Form 1095-B, Health Coverage, beginning with coverage in 2016 (for returns and statements filed and furnished in 2017). Notice 2015-68 also permitted and encouraged issuers to voluntarily report on 2015 catastrophic plan coverage (on returns and statements filed and furnished in 2016). Notice 2015-68 provided that an issuer that voluntarily reports on 2015 catastrophic plan coverage will not be subject to information reporting penalties for these returns and statements.

On August 2, 2016, the Treasury Department and the IRS published proposed regulations under § 6055 that would require issuers of catastrophic plans enrolled in through an Exchange to report catastrophic plan coverage under § 6055 on Form 1095-B. To allow issuers sufficient time to update their systems to comply with required reporting, the rule was proposed to be effective beginning with coverage for 2017 (for returns and statements filed and furnished in 2018). The preamble to the proposed regulations permitted and encouraged issuers to voluntarily report on 2016 catastrophic plan coverage (on returns and statements filed and furnished in 2017). In addition, the preamble to the proposed regulations provided that an issuer that voluntarily reports on 2016 catastrophic plan coverage will not be subject to information reporting penalties for these returns and statements. Because these regulations have not been finalized yet, the Treasury Department and the IRS are issuing this notice to allow issuers to continue to voluntarily report catastrophic plan coverage enrolled in through an Exchange and to inform issuers that information reporting penalties will not apply to such voluntary

reporting.

GUIDANCE

Consistent with guidance for 2015 and 2016, issuers of catastrophic plan coverage may, but are not required to, report on 2017 catastrophic plan coverage enrolled in through an Exchange (on returns and statements filed and furnished in 2018). In addition, issuers may rely on this notice to voluntarily report catastrophic plan coverage enrolled in through an Exchange for coverage years after 2017 to the extent final regulations requiring issuer reporting of catastrophic plan coverage enrolled in through an Exchange are not applicable. The Treasury Department and the IRS encourage issuers to voluntarily report on catastrophic plan coverage enrolled in through an Exchange.

An issuer that voluntarily reports on catastrophic plan coverage under this notice is not subject to information reporting penalties under §§ 6721 and 6722 with respect to returns and statements reporting such coverage.

FURTHER INFORMATION

The principal author of this notice is Erika C. Reigle of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact Erika C. Reigle at (202) 317-7006 (not a toll-free number).