INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

EMPLOYEE BENEFITS & PAYROLL SUBGROUP REPORT

BOYD J. BROWN
ANNE C. LENNAN
JULIA SHANAHAN
HOLLY L. SUTTON
REBECCA M. HARSHBERGER, SUBGROUP CHAIR

A. Employer and Insurer Reporting Under the Patient Protection and Affordable Care Act

Recommendation

IRPAC provided numerous recommendations in the 2011 and 2012 IRPAC Public Reports on these reporting requirements -- recommendations that are still relevant. We encourage IRS to review these recommendations.

Discussion

IRC §6055 and IRC §6056 were added by the Patient Protection and Affordable Care Act (ACA), Public Law 111-148, which was amended by the Health Care Education Reconciliation Act of 2010, Public Law 111-152, and then transition relief was provided in IRS Notice 2013-45. These reporting requirements will now apply to coverage provided on or after January 1, 2015; the first information returns are required to be filed in 2016.

IRS Notice 2013-45 states that the transition relief will provide additional time for dialogue with stakeholders in an effort to simplify the reporting requirements consistent with an effective implementation of the law. Transition relief will also provide employers, insurers, and other reporting entities additional time to develop their systems for assembling and reporting the needed data, according to the Notice.

IRPAC appreciates the transition relief. In IRPAC public reports and discussions with the IRS, we have repeatedly requested an 18-month lead-time for new reporting forms or extensive changes to existing forms. This transition relief demonstrates that the Service is hearing and acting upon our concerns.

Proposed rules on information reporting of minimum essential coverage (REG-132455-11) and proposed rules on information reporting by applicable large employers (REG-136630-12) were released in early September 2013. Given the timing of this report, IRPAC will provide IRS with comments later.

IRS has consistently reached out to IRPAC for ideas on how to simplify these reporting requirements and has encouraged IRPAC to brainstorm on ways to utilize information already provided to the agencies on other annual filing forms, such as the Form 5500, Annual Return/Report of Employee Benefit Plan.

The reporting requirements under IRC §6055 include significant individual data elements that are not captured currently by plan-level reports, such as the Form 5500. IRC §6055 requires sponsors of self-insured plans and insurers in the case of fully-insured plans to provide the name and TINs of the primary insured and all dependents covered under the plan, each individual’s dates of coverage, as well as other items.

The requirements under IRC §6056 require large employers (50 or more full-time employees) to report plan information that is not provided in current plan reporting. IRC §6056 requires large employers to certify the length of a waiting period, the months during which coverage was available, the monthly premium for the lowest cost option in each enrollment category, the employer's share of the total allowed costs of benefits provided, the number of full-time employees for each month during the calendar year, the name, address, and TIN of each full-time employee, and the months during which the employee and any dependents were covered under the health plan.

In response to IRS Notice 2012-32 and Notice 2012-33, IRPAC submitted two comment letters on June 11, 2012 that were included in the IRPAC 2012 Public Report. Comments were also submitted on March 18, 2013 (see Appendix D).

Since the publication of the transition relief, the IRS has asked IRPAC for feedback on alternative reporting options that would meet the requirements under the law. IRPAC appreciated the opportunity to comment on alternative reporting options. While alternatives may have limited use by the reporting community, we generally approve of alternative means to satisfy reporting obligations.

B. Missing TINs for Employer and Insurer Reporting

Recommendation

IRPAC recommends that the IRS issue TIN solicitation requirements and procedures for purposes of satisfying reporting under IRC §§6055 and 6056 and that the IRS explain these rules in plain language on the IRS website pages designed for individuals.

IRPAC also recommends that reporting entities should be deemed to have acted reasonably if their conduct conforms to the standard for acting in a reasonable manner under Treas. Reg. §301.6724-1(d) and the solicitation rules for missing TINs under Treas. Reg. §301.6724-1(e).

Discussion

A number of insurance companies have estimated that they are missing TINs for approximately 30 percent to 50 percent of their insured individuals. Some insurers have expressed serious concern about the credibility of the TINs they do have in their databases because they have not used the TINs so far. Insurers anticipate resistance from insured individuals in obtaining TINs and are seeking assistance from the IRS in educating the public about the need to provide an accurate TIN in a timely manner.

Fears of overwhelming numbers of mismatched TINs abound for insurers. The TIN matching program currently is contemplated only for purposes of backup withholding. The availability of a TIN matching system for purposes of Affordable Care Act (ACA) reporting would be helpful in order to identify potential TIN errors.

IRPAC acknowledges and appreciates the position taken in the preamble to the proposed rule on information reporting of minimum essential coverage. According to the preamble, reporting entities that make reasonable efforts to collect TINs but do not receive them will not be subject to penalties under §§6721 and 6722 for failure to timely report. The proposed regulations allow reporting entities to report a date of birth if a TIN is not available.

C. Patient-Centered Outcomes Research Trust Fund Chart

Discussion

IRS released final regulations that provide guidance on the fees imposed by the ACA on issuers of certain health insurance policies and plan sponsors of certain self-insured plans to fund the Patient-Centered Outcomes Research Trust Fund.

IRPAC created a chart to assist the employer/plan community in understanding the plans that were subject to the fee and provided this chart to IRS. IRPAC applauds the IRS for enhancing and publishing the chart on IRS.gov. The chart facilitated compliance during the first filing cycle for this new fee. We believe that the chart significantly reduced inquiries to the IRS on this topic (See Appendix E).

D. Minimum Essential Coverage

Recommendation

IRPAC recommends the IRS develop examples of limited benefit plans that would constitute minimum essential coverage to assist individuals in understanding the types of coverage that will preclude the availability of premium tax credits.

Discussion

An applicable large employer member may be subject to an assessable payment under IRC §4980H(a) if the employer fails to offer its full-time employees and their non-spousal dependents the opportunity to enroll in minimum essential coverage (MEC) under an eligible employer-sponsored plan.

MEC is defined in IRC §5000A(f), which specifies the types of health plans that qualify as MEC for purposes of the individual shared responsibility provision. MEC includes coverage under an eligible employer-sponsored plan, which is defined as a group health plan or group health insurance coverage offered by an employer to an employee that is a governmental plan, any other plan or coverage offered in the small or large group market, or a grandfathered plan offered in the group market. IRC §5000A(f)(3) provides that MEC does not include health insurance coverage which consists of coverage of excepted benefits described in section 2791(c)(1) of the Public Health Service Act, or sections 2971(c)(2)(3) or (4) of the Public Health Service Act if the benefits are provided under a separate policy, certificate, or contract of insurance.

The IRS plain language definition of MEC appears on an IRS webpage that provides questions and answers on the individual shared responsibility provision. According to Q&A 5, MEC includes the following:

- Employer-sponsored coverage (including COBRA coverage and retiree coverage)
- Coverage purchased in the individual market
- Medicare Part A coverage and Medicare Advantage
- Most Medicaid coverage
- Children's Health Insurance Program (CHIP) coverage
- Certain types of veterans health coverage administered by the Veterans Administration
- TRICARE
- Coverage provided to Peace Corps volunteers
- Coverage under the Non-appropriated Fund Health Benefit Program
- Refugee Medical Assistance supported by the Administration for Children and Families
- Self-funded health coverage offered to students by universities for plan or policy years that begin on or before Dec. 31, 2014 (for later plan or policy years, sponsors of these programs may apply to the U.S. Department of Health and Human Services (HHS) to be recognized as minimum essential coverage)
- State high risk pools for plan or policy years that begin on or before Dec. 31, 2014 (for later plan or policy years, sponsors of these programs may apply to HHS to be recognized as minimum essential coverage)

Q&A 5 also includes a paragraph explaining what MEC does not include. According to this paragraph, minimum essential coverage does not include coverage providing only limited benefits, such as coverage only for vision care or dental care, Medicaid covering only certain benefits such as family planning, workers' compensation, or disability policies.

The paragraph explaining what MEC does not include leads the reader to believe that there may be other, unenumerated limited benefit plan arrangements

that would and would not constitute MEC. Clarifications using more examples of limited benefit plans that would and would not constitute MEC would serve the interests of individuals in attempting to understand their options for premium tax credits and obligations under the individual shared responsibility provision.

E. Premium Tax Credit Educational Materials

Recommendation

IRPAC recommends that the IRS further develop the questions and answers on the premium tax credit webpage to address spouse and non-spouse dependent eligibility for premium tax credits.

Discussion

The ACA creates premium tax credits for eligible individuals who purchase health insurance coverage through exchanges, beginning in 2014 (IRC §36B(b)(1)). The premium tax credits generally are available to individuals with household incomes up to 400 percent of the federal poverty level. The credits are available on a sliding scale.

IRPAC recognizes that the IRS published a webpage on September 30, 2013 providing questions and answers on the premium tax credit. This is a good first step.

Employers are posing questions to IRPAC members about spouse eligibility for premium tax credits. A question and answer discussing the availability of premium tax credits for spouses when affordable self-only coverage is offered to an employee, but spousal coverage (while offered) is not affordable, would assist individuals in understanding their options.

Similarly, a question and answer discussing how employee coverage under an employer-sponsored plan impacts non-spouse dependent eligibility for premium tax credits would be helpful.

IRPAC looks forward to working with the IRS on developing educational materials that serve to educate the public.

F. Third-party Sick Pay Reporting

Recommendation

Based on ongoing discussions with the IRS, IRPAC recommends that the IRS continues its pursuit of assuming the responsibility of receiving and processing the third-party sick pay filings.

Discussion

Third-party sick pay is now reported to the Social Security Administration (SSA) who does not need or use the information. The SSA is revamping its Annual Wage Reporting System and will be eliminating third-party sick pay reporting effective for tax year 2014, processing year 2015.

Many employers use third party sick pay providers to handle Forms W-2, Wage and Tax Statement, for short-term and/or long-term disability payments. These providers operate on separate systems and significant coordination and communication is required between the third-party sick pay provider and the employer. Reporting directly to the IRS will be more effective and efficient compared to the current process of reporting to the SSA that, in turn passes the information over to the IRS.