



**National
Business
Group on
Health**

20 F Street, NW, Suite 200
Washington, D.C. 20001
202.558.3000 • Fax 202.628.9244
www.businessgrouphealth.org

Creative Health Benefits Solutions for Today, Strong Policy for Tomorrow

November 8, 2013

Submitted electronically via: www.regulations.gov

CC:PA:LPD:PR (REG-132455-11)
Room 5203
Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington, DC 20044

**Re: REG-132455-11 – Notice of Proposed Rulemaking: Information Reporting of
Minimum Essential Coverage**

Dear Sir or Madam:

The National Business Group on Health is pleased to comment on the Internal Revenue Service's notice of proposed rulemaking on the information reporting requirements of section 6055 of the Internal Revenue Code (Code).

The National Business Group on Health represents approximately 377 primarily large employers, including 66 of the Fortune 100, who voluntarily provide health benefits and other health programs to over 55 million American employees, retirees, and their families. Our members employ and provide health benefits for employees under a wide variety of work arrangements, including full-time, part-time, seasonal, and temporary. In addition, our members often operate multiple lines of business and tailor employee work and benefit arrangements to the specific needs of each line of business.

As our members prepare for implementation of § 6055 and other new Code provisions under the Patient Protection and Affordable Care Act, a primary concern will be minimizing the administrative and cost burdens associated with those requirements. Allowing plan sponsors flexibility to adapt their Affordable Care Act compliance procedures to existing work, benefit, and payroll arrangements will reduce these burdens and allow plan sponsors to devote more resources toward maintaining and improving health benefits for their employees. Therefore, the National Business Group on Health welcomes the Service's efforts, in implementing § 6055, to minimize administrative burden and duplicative reporting.

In particular, the National Business Group on Health supports the Service's proposals to:

- Develop optional simplified methods for § 6056 and § 6055 reporting;
- Allow plan sponsors to file §6055 information returns electronically;
- Allow plan sponsors to furnish §6055 employee statements electronically;
- Allow employers to combine employee statements under § 6055 and § 6056 into one statement;
- Allow third parties to facilitate § 6055 reporting on behalf of plan sponsors; and
- Provide that the waiver of penalty and special rules under Code § 6724 apply with respect to § 6055 information returns and employee statements.

In addition, we encourage the Service to take into account the plan design features typical of large, self-insured employer-sponsored plans by:

- (1) **Allowing plan sponsors flexibility to report in a manner that accommodates plans' current administrative, payroll, and recordkeeping procedures;**
- (2) **Eliminating the requirement to provide TINs of spouses and other dependents;**
- (3) **Minimizing duplicative information reporting by employers who already share plan data with federal agencies, including employers with a Voluntary Data Sharing Agreement (VDSA) with the Centers for Medicare and Medicaid Services (CMS);**
- (4) **Allowing self-insured plan sponsors to combine reporting under Code § 6055 with reporting under Code § 6056;**
- (5) **Allowing greater flexibility in using simplified reporting methods.**
- (6) **Allowing greater flexibility in providing § 6055 employee statements electronically;**
- (7) **Clarifying in future guidance that plan sponsors are not required to report with respect to group health plans that provide supplemental coverage such as wellness programs, employee assistance programs (EAPs), or on-site clinics.**
- (8) **Allowing relief from applicable penalties when employers make reasonable, good faith efforts to comply with § 6056.**

We provide further discussion of these recommendations below.

I. Current Plan Administration, Payroll, and Recordkeeping

As noted above, the National Business Group on Health supports the Service's efforts to minimize the administrative burden of reporting under §6055. To that end, we ask the Service to consider that complying with § 6055, as currently proposed, will involve substantial reprogramming of payroll and recordkeeping systems and staffing resources for our members. Our members' concerns include the following:

- Our members often operate multiple lines of business and tailor plan designs to the specific needs of each line of business. Their health plans often make numerous benefit packages with different premium, coinsurance, deductible, and copayment levels available to employees. Cost-sharing levels, premiums, and coverage options may vary with employees' compensation. Many of our members currently do not maintain the information required under § 6055 for all of their plans in a uniform, readily accessible format. Thus, for many of our members, providing information on coverage months and dependents will involve substantial changes to administrative procedures and reprogramming of payroll and recordkeeping systems.
- In addition, many of our members who offer dependent coverage currently do not maintain names, addresses, and TINs of dependents because they offer limited tiers of coverage, such as employee only and employee-plus-family. For these members, providing information on coverage months and TINs for individual employees and dependents will involve substantial changes to administrative procedures and reprogramming of payroll and recordkeeping systems, at substantial cost.
- As noted above, our members employ full-time, part-time, seasonal, and temporary employees, and employees' eligibility for health coverage may change mid-year, such as when they shift between part-time and full-time status. Tracking and reporting coverage months for employees who have coverage for less than a full plan year, have coverage for multiple periods within a plan year, work for multiple related employers in a single plan year, or change benefit packages within a plan year will require substantial changes to administrative procedures and reprogramming of payroll and recordkeeping systems.
- Large, self-insured plans often rely on third-party administrators to conduct payroll, recordkeeping, and plan administrative functions. Therefore, these third parties often are in the best position to respond to inquiries related to employer reporting requirements.
- Our members estimate that the necessary changes to administrative procedures and reprogramming of payroll and recordkeeping systems described above will

require at least 6-9 months, assuming that final regulations clearly define the data elements necessary for § 6055 and § 6056 reporting.

For the reasons described above, the National Business Group on Health recommends that:

- (A) In developing final regulations, the Service allow employers to report in a uniform manner with respect to all full-time employees, including seasonal or partial year employees.
- (B) Final regulations allow employers to list a third party as the employer contact on § 6055 information returns.
- (C) The Service allow employers adequate time—at least 6-9 months—to implement necessary changes to administrative procedures and reprogramming of payroll and recordkeeping systems.

II. Required Data Elements: TINs

Because of the substantial time and resources that § 6055 and § 6056 reporting will require (as described in Section I above), we recommend that to extent possible, final regulations simplify and minimize the number of data elements required under § 6055. Specifically, final regulations should not require employers to report TINs for spouses and dependents. It has been our members' experience (for example, with the Medicare Secondary Payer program and CMS's Data Match program) that obtaining TINs for these individuals is often a burdensome and costly process. Therefore, we recommend that employers be permitted to provide dates of birth instead of TINs. In the alternative, we recommend that final regulations provide that requests for SSNs during the new hire process and plan enrollment processes constitute "solicitations" for purposes of §6055.

III. Minimizing Duplicative Reporting

In addition to the administrative and cost considerations described above, we also recommend that the Service, in final regulations, take into account the § 4980H and § 36B compliance efforts that large, self-insured plan sponsors have already undertaken to date. Most of our members have adopted plan designs that ensure that all full-time employees (as defined under § 4980H) receive an offer of at least one plan option that meets ACA affordability and minimum value standards. Most of these employers also offer minimum value coverage to eligible employees' spouses and children. We believe that employers adopting such plan designs should be permitted opportunities to minimize duplicative reporting under § 6056, § 6055, and § 6051. Specifically:

- (A) To the extent that plan sponsors already share information on plan enrollees and plan details with CMS through a VDSA, they should not have to report the same information separately for § 6056 and § 6055 purposes. We recommend that the Service obtain this information from

CMS or, in the alternative, that plan sponsors be permitted to provide VDSA submissions to both agencies using the existing VDSA process.

- (B) Self-insured plan sponsors should have the option to combine reporting under Code §§ 6056, 6055, and 6051. For most of our members, the employer (for § 6056 purposes) and plan sponsor (for § 6055 purposes) are the same entity. Allowing self-insured plan sponsors to use a single form to satisfy the requirements of § 6056 and § 6055 would minimize administrative and cost burdens and risk of inconsistent reporting. For example, combined reporting would allow employers/plan sponsors to report contact information and participants' coverage months only once.
- (C) Likewise, we strongly support adoption and expansion of the simplified reporting method described in Section XI(A) of the Preamble such that employers could complete § 6056 and § 6055 reporting with Forms W-2. We believe that most of our members would achieve substantial time and cost savings if they were permitted to use Forms W-2 to provide the following information:
- The employee contribution for the lowest-cost option for self-only coverage;
 - The information and certifications described in (B) and (C) above;
 - The months that individuals received offers of coverage; and
 - The months that individuals were enrolled in coverage.

We note that for employers with large employee populations, using one or more simplified reporting methods for some employees while using the general method for the remainder of employees would not achieve substantial cost savings. As noted above, our members often have employees who work under a wide variety of hours and compensation arrangements, which means that many of those employees will not remain with a single employer for the entire calendar year. Also, the simplified and general reporting methods would each require independent reprogramming of payroll and recordkeeping systems. Therefore, we believe that allowing self-insured plan sponsors to combine reporting under Code §§ 6056, 6055, and 6051 would be the best method for reducing their administrative and cost burdens involved with complying with § 6056 and § 6055 and minimizing the risk of inadvertent reporting errors.

IV. Electronic Reporting and Employee Statements

As described above, a primary concern for National Business Group on Health members will be minimizing administrative and cost burdens associated with reporting under § 6055 and other Affordable Care Act provisions. Because our members often sponsor multiple group health plans that are available to large populations of employees and dependents, our members view electronic reporting and disclosure as a key tool in maintaining streamlined and cost-effective reporting and disclosure procedures. Many of our members have devoted substantial resources toward providing plan-related notices

and disclosures electronically—such as the summary of benefits and coverage (SBC), summary plan description (SPD), the Notice to Employees of Coverage Options (Notice), and Forms W-2—and have found that many employees prefer electronic communications because the communications can be accessed at any time, often from a single location. Therefore, the National Business Group on Health recommends that final regulations simplify the rules for providing electronic employee statements under § 6055 and § 6056. Specifically, we recommend that:

- (A) Final regulations permit employers to provide a single electronic employee statement for both § 6055 and § 6056 purposes; and
- (B) Final regulations permit employers to provide § 6055 and § 6056 employee statements electronically without obtaining separate affirmative consents if they have already obtained consent with respect to another electronic plan-related notice, such as Form W-2, SPD, SBC, or Notice.

V. Supplemental Coverage (Wellness Programs, EAPs, On-Site Clinics)

In addition to the potential burdens of complying with multiple reporting requirements under the Code, we note that many of our members' employees and dependents may receive health benefits through more than one group health plan that falls within the definition of "minimum essential coverage" under Code § 5000A. For example, many of our members provide wellness programs that supplement major medical coverage. These wellness programs may offer a variety of benefits such as counseling, disease management programs, or exercise facilities. These programs may not be available to all employee populations, and where these programs are available, not all employees will use wellness program benefits. While these programs often are a part of the same group health plan that provides major medical coverage, some plan sponsors offer them through separate group health plans that may not constitute "excepted benefits" for purposes of Code § 5000A—thereby potentially triggering duplicate reporting under Code § 6055. These same concerns apply to our members who provide on-site medical clinics that provide services such as first aid, pharmacy services, or preventive health screenings that supplement major medical coverage.

To minimize duplicative reporting, we recommend that final regulations provide that employers are not required to report under § 6055 with respect to group health plans that provide supplemental benefits such as wellness programs, EAPs, or on-site clinics.

VI. Relief from Applicable Penalties

As noted above, complying with § 6055 and § 6055 will involve substantial reprogramming of our members' payroll and recordkeeping systems. It is likely that § 6055 information returns and employee statements will include inadvertent errors, particularly in the first years of implementation. Such errors are likely to occur in situations such as mergers and acquisitions among different employers, when employers may need to transition employees from one plan and recordkeeping system to another.

In addition, employees generally must notify plan sponsors of changes in dependent eligibility due to events such as birth, divorce, or obtaining other coverage. Plan sponsors often do not receive such notification immediately—sometimes not until months after the event—which may necessitate retroactive coverage changes. These scenarios also may result in inadvertent errors in § 6055 information reporting, particularly if events causing eligibility changes occur near the filing date.

Therefore, we recommend that the Service allow relief from applicable penalties under Code §§ 6721 and 6722, at least for the first year of implementation, provided employers make reasonable, good faith efforts to comply and correct such errors within a reasonable period after discovering the errors.

Again, thank you for considering our comments and recommendations on the reporting of health coverage under Code § 6055. Please contact me or Steven Wojcik, the National Business Group on Health's Vice President of Public Policy, at (202) 558-3012 if you would like to discuss our comments in more detail.

Sincerely,

A handwritten signature in cursive script that reads "Helen Darling".

Helen Darling
President