



ACA COMPLIANCE UPDATE

Draft 2015 ACA Reporting Instructions Require Reporting by Employers with HRAs

The IRS has released draft 2015 instructions for the B-Series and C-Series reporting forms (Forms 1094-B, 1095-B, 1094-C and 1095-C) that will be used by employers and coverage providers to report certain information regarding employment and health coverage status to employees and the Internal Revenue Service (IRS) in the first quarter of 2016.

Within the instructions for the B-Series forms is a trap for the unwary. The draft instructions indicate that the ACA's provider reporting applies to employers of any size that sponsor a self-insured health reimbursement arrangement ("HRA") for employees, even when the HRA is paired with a fully insured group health plan offered by the employer.

This seems to be a departure from earlier guidance, which indicated that coverage that is "supplemental" to major medical coverage was not subject to reporting. This had been a relief to many employers—both large and small—that offer HRAs alongside fully insured group health plans, as this would relieve them of having to report as a provider of self-insured coverage. It would have enabled ALE's with fully insured major medical plans to avoid completing Part III of Form 1095-C, and small employers would have avoided reporting altogether as long as they remained fully insured for major medical, even if they offered an HRA.

However, the IRS has changed course in the draft 2015 instructions for the B-Series reporting forms. The instructions provide that coverage isn't "supplemental" unless it's required to be reported by the same reporting entity. In other words, an HRA isn't supplemental to an insured group health plan that covers the same employees as the HRA because the carrier is responsible for the fully insured component and the employer is responsible for reporting the self-insured component.

Hopefully the IRS will revisit this requirement in the final instructions. Reporting HRA coverage does not appear to provide any new information to either participants or the IRS, as they'll already receive reports that will inform them of the months in which they had "minimum essential coverage."

For example, an ALE with a fully insured group health plan and an HRA would complete Part III of Form 1095-C for months in which an employee (or former employee) has coverage under the HRA. This could extend into the following year for a former employee who elects COBRA for the HRA, whereas if the HRA were considered “supplemental” the employer’s reporting obligation would end at the end of the year in which employment terminates. The instructions allow ALEs to use the B-Series or C-Series forms for reporting self-insured coverage in the year following termination of employment.

A small employer with a fully insured group health plan and an HRA would complete Form 1095-B for months in which an employee (or former employee) had coverage under the HRA. Similar to the treatment for ALEs, the reporting obligation may extend into the following year for a former employee who elects COBRA for the HRA. Non-ALEs must use the B-Series forms to reported coverage under a self-insured plan.

The instructions do not provide any special rules for HRAs in terms of reporting dependent coverage. Reporting for major medical coverage includes reporting covered dependents; however, many HRAs do not require an employee to affirmatively enroll family members whose claims may be reimbursable under the HRA. Further clarification from the IRS on this issue would be welcome.

The draft forms and instructions can be found here:

Form 1094-B www.irs.gov/pub/irs-dft/f1094b--dft.pdf

Form 1095-B www.irs.gov/pub/irs-dft/f1095b--dft.pdf

B-Series Instructions www.irs.gov/pub/irs-dft/i109495b--dft.pdf

Form 1094-C www.irs.gov/pub/irs-dft/f1094c--dft.pdf

Form 1095-C www.irs.gov/pub/irs-dft/f1095c--dft.pdf

C-Series Instructions www.irs.gov/pub/irs-dft/i109495c--dft.pdf

The MB&W Take-Away Here

Employers sponsoring HRAs should consider the impact of the draft instructions on their reporting obligations. Unless the IRS broadens its definition of “supplemental” coverage in the final instructions, employers should be prepared to report HRA coverage for all covered employees. At this time, the IRS has not indicated when final instructions for 2015 might be available.

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