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MEMORANDUM

March 14, 2014

To: Tribal Health Clients

From: Hobbs, Straus, Dean & Walker LLP

Re: *IRS Final Rules on the Reporting Requirements for the Affordable Care Act's Employer Mandate*

As mentioned in our previous memoranda, the Affordable Care Act (ACA) requires employers to offer full-time employees and their dependents certain minimum levels of health coverage or pay a significant fine. To assist in enforcing this requirement, the ACA enacted sections 6055 and 6056 of the Internal Revenue Code, which create reporting requirements for insurers and employers, respectively. Under both sections 6055 and 6056, returns must be filed with the Internal Revenue Service (IRS) and statements regarding coverage must be furnished to employees. On March 10, 2014, the Internal Revenue Service published final rules regarding these reporting requirements. 79 Fed. Reg. 13220 (Mar. 10, 2014); 79 Fed. Reg. 13231 (Mar. 10, 2014).

6055 Reporting: Insurers, including self-insured group plans

Reporting under section 6055 is required of all insurers that provide minimum essential coverage to individuals, including employers that provide self-insured group health plans to their employees. *See* 26 C.F.R. § 1.6055-1(a); 79 Fed. Reg. 13220. Under self-insured group health plans, an employer pays the costs of medical coverage directly rather than contracting out to an insurance company for health care coverage. Only reporting on minimum essential coverage, as defined in the ACA, is required, and insurers are not required to report on arrangements that provide supplemental benefits, such as health reimbursement arrangements. 79 Fed. Reg. at 13221.

The following information is required to be reported on section 6055 returns: the name, address, and employer identification number (EIN) of the reporting entity; the name, address, and taxpayer identification number (TIN) for the primary insured, or a birthdate if a TIN is not available; the name and TIN, or birthdate, of all other persons insured, such as dependents; dates of coverage; and any other information specified in IRS forms, instructions or other guidance. 26 C.F.R. § 1.6055-1(e); 79 Fed. Reg. at 13228-13229. Filing methods are discussed below.

6056 Reporting: Applicable large employers

Reporting under section 6056 is required of all employers that meet the ACA's definition of an applicable large employer. 26 CFR § 301.6056-1(a); 79 Fed. Reg. at 13247. Applicable large employers are employers that employed an average of 50 or more full-time employees on business days during the previous calendar year. 26 U.S.C. § 4980H(c)(2). Additionally, an employer may be considered an applicable large employer member if the employer is part of a controlled group that is treated as a single employer and that employed 50 or more full-time employees.¹

General 6056 reporting requirements

For general 6056 reporting, the following information is required by statute: the name, address, and EIN of the employer; the name and telephone number of the employer's contact person; the calendar year being reported; a certification as to whether the employer offered full-time employees and their dependents the opportunity to enroll in minimum essential coverage, by calendar month; for each full-time employee, the months during which such coverage was available; for each full-time employee, the employee's share of the lowest cost monthly premium for self-only coverage, by calendar month; the number of full-time employees for each month; the name, address, and TIN of each full-time employee and the months, if any, the employee was actually covered under the employer-sponsored plan; and any other information specified in IRS forms, instructions, or other guidance. 26 CFR § 301.6056-1(d); 79 Fed. Reg. at 13248.

The preamble to the final rule on 6056 reporting states that the IRS will also require the following additional information, some of which will be reported using indicator codes: information as to whether coverage offered provided minimum value and whether the employee had the opportunity to enroll a spouse; the total number of employees, by calendar month; whether the effective date of coverage was affected by a permissible waiting period, by calendar month; whether an applicable large employer member had no employees or otherwise credited any hours of service, by calendar month; whether an applicable large employer member is a member of an aggregated group, determined under section 414(b), (c), (m), or (o) and, if applicable, the name and EIN of each employer member; the name, address, and identification number of a person designated to report on behalf of a governmental entity; whether an employer is not subject to an assessable payment due to participation in a multiemployer plan; and the name, address, and identification number of a third party reporting for an applicable large employer member. 79 Fed. Reg. at 13237.

¹ All entities treated as a single employer under section 414(b), (c), (m), or (o) of the Internal Revenue Code are treated as a single employer for the purposes of the ACA. The IRS has stated that until further guidance is issued, government entities, including tribal governments, may apply a reasonable, good faith interpretation of section 414(b), (c), (m), or (o) to determine whether a particular entity is an applicable large employer member. See 79 Fed. Reg. at 13234 n.3.

Optional Alternative Filing Methods

The IRS's final rule also provides three optional alternative filing methods for eligible employers. An employer is permitted to use different reporting methods for different employees. 79 Fed. Reg. 13243. To qualify for using these simplified reporting methods, employers must go above and beyond the requirements in the final rule on section 4980H coverage requirements. 79 Fed. Reg. 8544 (Feb. 12, 2014).

First, the employer may make a certification of qualifying offer. An applicable large employer is considered to have met the 6056 reporting requirements if it certifies on the 6056 transmittal form that it made a "qualifying offer" to a full-time employee and the employee's spouse and dependents for the entire calendar year.² A qualifying offer is an offer to provide minimum essential coverage that provides minimum value. A qualifying offer may not cost the employee, for self-only coverage, more than 9.5 percent of the mainland single federal poverty line. The employer must state on the form it submits to the IRS and on the statement it furnishes to the employee that the qualifying offer was made for all 12 months of the calendar year. 26 CFR § 301.6056-1(j)(1); 79 Fed. Reg. at 13241, 13249.³ Solely for 2015, an employer will be considered to have met the 6056 reporting requirements if it certifies that it has made a qualifying offer to at least 95 percent⁴ of its full-time employees and their spouses and dependents and furnishes a statement to each of its full-time employees. 79 Fed. Reg. at 13241.

Second, an employer may certify that it provides minimum essential coverage that is affordable and provides minimum value to at least 98 percent⁵ of the employees (and their dependents) on whom the employer reports in its section 6056 return. If the employer makes this certification, the employer does not have to separately identify on its section 6056 return whether a particular employee is full-time or report the total number of full-time employees. 26 CFR § 301.6056-1(j)(2); 79 Fed. Reg. at 13249, 13242.

Third, the IRS's final rule on section 4980H stated that employers with between 50 and 99 full-time employees will not be assessed a penalty for 2015 so long as the employer certifies that (1) it had fewer than 100 employees on business days in 2014; (2)

² The rule on 4980H coverage requirements only requires employers to offer coverage to employees and dependents, not spouses. See 26 C.F.R. § 54.4980H-1(a)(12); 79 Fed. Reg. at 8579. Yet an employer will not qualify for this simplified reporting method without offering coverage to spouses.

³ The preamble to the final rule notes that this alternative filing method is not available for employers that do not offer dependent coverage, including employers utilizing the transition relief provided in the final section 4980H regulations pertaining to the offer of coverage to dependents in 2015. 79 Fed. Reg. at 13241.

⁴ Note that to avoid a penalty under section 4980H, the IRS has stated that in 2015 an employer may offer coverage to only 70 percent of full-time employees. 79 Fed. Reg. at 8575. However, an employer only qualifies for the special alternative filing method for 2015 if it offers coverage to 95 percent of employees and their spouses and dependents.

⁵ Note that to avoid penalty under section 4980H, the employer must offer minimum essential coverage to 95 percent of full-time employees. 26 CFR § 54.4980H-4(a). However, to qualify for the simplified reporting process, the employer must offer coverage to 98 percent of employees.

it did not reduce its workforce or hours of service from February 9, 2014 to December 31, 2014 in order to qualify for the transition relief; and (3) it has not eliminated or materially reduced any coverage it offered as of February 9, 2014. 79 Fed. Reg. at 8574. The preamble to the final rule on 6056 reporting provides that these mid-sized employers must still report under section 6056 for 2015, but they need only certify that they meet these requirements. 79 Fed. Reg. at 13242-13243.

Filing Returns and Furnishing Employee Statements

To simplify the reporting requirements, the IRS final rules provide that one form will be provided for both 6055 and 6056 reporting. 79 Fed. Reg. at 13224, 13235. Applicable large employers will use a transmittal form, Form 1094-C, as well as Form 1095-C, which will have both a section for 6055 reporting and a section for 6056 reporting. Drafts of these forms are expected to be released shortly.

Each applicable large employer that is a member of a controlled group is responsible for filing statements under 6056 separately. 26 CFR § 301.6056-1(c)(1)-(2); 79 Fed. Reg. at 13248. For purposes of 6055 reporting, however, members of controlled groups may assist other members in filing returns and furnishing employee statements on behalf of all members. Each applicable large employer in the controlled group will be held separately liable for timely and correct reporting under section 6055. 79 Fed. Reg. at 13221.

A governmental entity that maintains a self-insured group health plan may enter into a written agreement to designate another governmental entity or agency to file returns with the IRS and furnish statements to employees. 26 C.F.R. § 1.6055-1(c)(2)(E)(ii); 79 Fed. Reg. at 13228. Similarly, an applicable large employer member that is a governmental entity may enter into a written agreement to designate a person to file returns with the IRS and furnish statements to employees. 26 CFR § 301.6056-1(k); 79 Fed. Reg. at 13249.

Electronic filing is required for entities filing at least 250 returns and is optional for others. 79 Fed. Reg. at 13224, 13239. Statements must also be furnished to individuals and may be furnished electronically if the employee affirmatively consents. 26 CFR § 301.6056-2; 79 Fed. Reg. at 13225. Statements must be furnished to employees by January 31 of the following year and forms must be filed with the IRS no later than February 28 of the following year unless they are submitted electronically, in which case they are due to the IRS by March 31. 26 CFR §§ 1.6055-1(f), (g)(4); 301.6056-1(e), (g); 79 Fed. Reg. at 13229, 13248.

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