6055 Reporting, HRAs, and "Supplemental Coverage"

The Affordable Care Act (ACA) implemented section 6055 of the Internal Revenue Code, which requires IRS reporting from any entity that provides "minimum essential coverage" (MEC) to individuals. Employers who are applicable large employers (ALEs) have related reporting obligations under section 6056.

Beginning in 2013, during the proposed rulemaking stage, the government was clear that health savings accounts (HSAs) and health reimbursement arrangements (HRAs) that supplement MEC are not required to report under the 6055 requirements. This obligation, or lack thereof, was repeated in the final regulations and in related IRS FAQs. However, the recent Draft Instructions for Forms 1094-B and 1095-B contain new and contradictory information on page three:

> **Supplemental Coverage**
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> Providers aren't required to report the following minimum essential coverage that is supplemental to other minimum essential coverage.
>
> - Coverage that supplements a government-sponsored program, such as Medicare or TRICARE supplemental coverage.
> - Coverage of an individual in more than one plan or program provided by the same plan sponsor (the plan sponsor is required to report only one type of minimum essential coverage).
>
> Coverage isn't provided by the same plan sponsor if they aren't reported by the same reporting entity. **Thus, an insured group health plan and a self-insured health reimbursement arrangement covering the employees of the same employer aren't supplemental.** (Emphasis added)

This language regarding "reported by the same reporting entity" is also new. Taken at face value, this language in the draft instructions would require employers of all sizes to greatly increase their reporting obligations if they offer an HRA to employees. For instance:

- An ALE with fully-insured coverage would not normally complete Part III of the 1095-C, but would need to do so if the ALE had a self-funded HRA.

- Small employers (less than 50 full-time employees) with fully-insured plans (who would typically leave reporting obligations in the hands of the carrier) would be required to report on the HRA.

Questions about this new language abound. For instance, what does “provided by the same plan sponsor” mean? Arguably the employer is the plan sponsor of an insured or a self-funded plan. Furthermore, under the ACA, HRA design was severely limited by the annual dollar limit prohibitions, as HRAs by their nature impose limits on spending. The government provided exceptions for HRAs that provide excepted benefits (vision and dental), retiree-only HRAs, and HRAs that are integrated with a larger group health plan. It is unclear if an integrated HRA would have to be reported under the new language in the draft instructions. It is also not entirely clear which forms you would use to report HRAs, likely because the forms were not created, nor were instructions provided, for reporting on HRAs.

The IRS makes it clear that the draft instructions are not for use, as changes often occur between draft and final forms. There is no official target date for the final forms, but it is anticipated they will be released in the fall of 2015.

Interested parties may comment on the draft form using the IRS online comment page. There is no way of knowing if the final forms will include the language about HRAs, however, it is believed that it is impractical if not impossible to report on HRAs the way the reporting forms are currently structured.

Employers with HRAs should reach out to their carriers, third-party administrators, and any vendor they rely on for reporting to discuss the approach or approaches these entities are taking. Until the instructions are finalized, it is unclear what the reporting obligations for HRAs will be.

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