

Health Care Reform & Same-Sex Spouse Benefits

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Overview

- Patient Protection and Affordable Care Act (“ACA”) Updates
 - Reporting for 2015 Tax Year
 - *King v. Burwell*
- Wellness Program Update
- Same-Sex Spousal Benefits
 - *Obergefell v. Hodges*
 - Issues to Consider post-*Windsor*



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Code §§ 6055 and 6056 Reporting

- ▶ Mandatory reporting for 2015 tax year (due 2016)
- ▶ Two different reporting requirements
- ▶ Code § 6055: Minimum essential coverage reporting
- ▶ Code § 6056: Applicable large employer reporting
- ▶ Forms for reporting
 - 1094-B
 - 1095-B
 - 1094-C
 - 1095-C



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Information Reported

- ▶ Information reported for each calendar month
- ▶ Examples:
 - Type of coverage offered
 - To whom coverage offered (employee, spouse, dependents)
 - Enrollment in coverage
 - Cost of coverage
 - Covered individuals' Social Security numbers
 - Enrollment information



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Form 1095-C

Form 1095-C Department of the Treasury Internal Revenue Service	Employer-Provided Health Insurance Offer and Coverage		OMB No. 1345-0306																										
► Information about Form 1095-C and its separate instructions is at www.irs.gov/1095c .			2014																										
Part I Employee		Applicable Large Employer Member (Employer)																											
<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED <input checked="" type="checkbox"/> 2014																													
1 Name of employee <input type="text"/> 2 Social security number (SSN) <input type="text"/> 3 Street address (including apartment no.) <input type="text"/> 4 City or town <input type="text"/> 5 State or province 6 Country and ZIP or foreign postal code 7 Name of employee <input type="text"/> 8 Employer identification number (EIN) <input type="text"/> 9 Street address (including name or route no.) <input type="text"/> 10 City or town <input type="text"/> 11 State or province <input type="text"/> 12 ZIP or foreign postal code <input type="checkbox"/> 13 Contact telephone number																													
Part II Employee Offer and Coverage																													
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>All 12 Months</th> <th>Jan</th> <th>Feb</th> <th>Mar</th> <th>Apr</th> <th>May</th> <th>June</th> <th>July</th> <th>Aug</th> <th>Sept</th> <th>Oct</th> <th>Nov</th> <th>Dec</th> </tr> </thead> <tbody> <tr> <td>\$</td> </tr> </tbody> </table>				All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec																	
\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$																	
14 Offer of Coverage Under Minimum Essential Coverage <input type="checkbox"/> 15 Employee Share of Premiums (if applicable) <input type="checkbox"/> 16 Monthly Premiums <input type="checkbox"/> 17 Minimum Value <input type="checkbox"/> 18 Premium Tax Credit 19 Monthly Premiums <input type="checkbox"/> 20 Premium Tax Credit 21 Minimum Value 22 Premium Tax Credit																													
For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 0570AM Form 1095-C (2014)																													



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Reporting for Fully Insured Plans

- Insurer reports minimum essential coverage
 - Form 1095-B to employees
 - Forms 1095-B and 1094-B to IRS
- Employer reports offers of coverage
 - Form 1095-C to employees
 - Forms 1095-C and 1094-C to IRS
- Deadline for reporting



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Reporting for Self-Insured Plans

- ▶ Minimum essential coverage and “employer mandate” reported on one form (Form 1095-C)
- ▶ Employer responsible for reporting on Form 1095-C
 - Due to employee January 31 (for 2015)
 - Due to IRS February 28 if filing on paper (March 31 if filing electronically) (for 2015)
- ▶ Employer transmits Forms 1095-C to IRS using Form 1094-C

Preparing To Report

- ▶ Start preparing now!
- ▶ Forms look simple ... but ...
- ▶ Questions to consider:
 - Where is the data?
 - How will the data be aggregated/analyzed?
 - Who is responsible for preparing, filing, and mailing?
 - Role of current vendors?
 - Implementation timeline?

King v. Burwell

► Background

- Subsidized coverage through Exchanges (Marketplaces)

► Issue before the Court

► Potential implications

Wellness Program Background

► Generally considered a “group health plan”

► Primarily governed by HIPAA

- Exception to general rule prohibiting discrimination based on a health factor
- If it complies with the regulations, a group health plan may provide rewards (penalties) based on health factors
- Examples:
 - ◆ Surcharge for tobacco use
 - ◆ Biometric screenings
 - ◆ Health risk assessments

Two Types of Wellness Programs

Participatory

- ▶ Does not provide a reward, or
- ▶ Does not include any conditions for obtaining a reward that is based on satisfying a standard related to a health factor
- ▶ Examples

Health-contingent

- ▶ Two sub-types
- ▶ Activity-only
 - Perform/complete activity relating to a health factor to obtain reward
 - Not required to attain specific health outcome
- ▶ Outcome-based
 - Must attain or maintain specific health outcome to obtain reward



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New EEOC Proposed Regulations

- ▶ Federal Equal Employment Opportunity Commission (“EEOC”) concern: wellness programs violate Title I of the Americans with Disabilities Act (“ADA”)
- ▶ New proposed regulations:
 - Voluntary
 - Notice
 - Limitations on Incentives
 - Confidentiality
- ▶ Compliance steps



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Same-Sex Spouse Benefits

► *Obergefell v. Hodges*

- Issues
 - ◆ Is there a constitutional right for individuals of the same-sex to marry?
 - ◆ Does the Constitution require one state to recognize same-sex marriages legally performed in another state?
- To be decided in June 2015 by United States Supreme Court



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Post-Windsor Issues

- Definition of “spouse” in plan documents
- Selected health plan issues
 - HIPAA special enrollment
 - COBRA
 - Dependent care assistance plan limits
 - Controlled groups
- Tax issues
 - State versus federal tax treatment
 - Imputed income



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