



LEGAL ADVICE FOR HEALTH PLANS

HEALTH LAW ALERT

March 10, 2014

IRS Requires Health Plans to Report Insurance Coverage Reasonable Efforts to Collect SSNs for all Enrollees Required; Plans Must Send Annual Statements to Subscribers

The Internal Revenue Service formally published a final rule today that requires health insurers, self-funded plans, and others that provide “Minimum Essential Coverage” to enrollees to report the coverage to the Internal Revenue Service and send statements of the coverage (similar to a W-2 or 1099) to the subscriber (or policyholder, in the individual market). As part of the reporting process, health plans will be required to make “reasonable efforts” to obtain Social Security Numbers for each enrollee. Those efforts must involve (at least) two “solicitations.” Reporting is based on a calendar year and the first year for which reporting is required is 2015—reports will be due by February 28, 2016 (March 31 for plans meeting electronic filing requirements).

The rule generally applies to any person that provides major-medical coverage to an individual (including grandfathered health plans). The rule does not apply to insurers that provide only “excepted benefits,” including limited-scope vision and dental coverage. See the box on page 2 for other coverage to which the requirement does not apply.

The final rule is published at 79 *Federal Register* 13220 ([click here](#)).

Reporting Requirements

A health insurer or other entity that provides Minimum Essential Coverage will be required to report to the IRS for each individual with such coverage—each enrollee/member:

- Name:
- Taxpayer Identification Number or “TIN” (usually an individual’s Social Security Number); and
- The months for which the individual was enrolled in coverage (and entitled to benefits) for at least one day during the month.

In addition, the health insurer or other reporting entity must report the subscriber's (in the individual market, the policyholder's) address and, if coverage was provided through a group plan, the name, address, and Employer Identification Number of the employer sponsoring the plan.

Moreover, the health insurer or other reporting entity must provide a statement to the "responsible individual"—the subscriber (in the individual market, the policyholder). The statement—similar to a 1099 or W-2—must include the information described above for each enrollee/member covered under the subscriber's (policyholder's) coverage as well as a contact person for the health insurer or other reporting entity and a phone number for the contact person.

Collecting Social Security Numbers.

Although the rule appears to permit a health insurer or other reporting entity to use "date of birth if a TIN is not available," the IRS explains in the preamble to the rule that other IRS rules require a health insurer or other reporting entity to make "reasonable efforts" to obtain each enrollee's/member's TIN. Failure to make reasonable efforts to obtain an individual's TIN could subject a reporting entity "to penalties for failure to file a correct information return." A health insurer or other reporting entity "will be treated as acting in a responsible manner if the [insurer or entity] properly solicits the TIN but does not receive it," in which case, the insurer (or other reporting entity) may use "date of birth" rather than TIN in its report to the IRS. Proper solicitation requires an attempt to obtain the TIN for each enrollee/member "at the time the relationship with the [subscriber (policyholder in the individual market)] is established" and, if that is unsuccessful, at least one annual solicitation thereafter. The annual solicitation may be by mail, phone, e-mail, or other means.

Many health plans have stopped using (or even collecting) Social Security Numbers (at least in part) because of concerns about security. Indeed, many State breach notification laws limit the breaches for which

Reporting *Not* Required For all Major Medical Coverage

Excepted Benefits. Insurers and other entities offering "excepted benefits" (as defined in 42 U.S.C. § 300gg-91(c)) are not subject to the reporting requirements.

Government Sponsored Coverage. Government agencies responsible for programs that provide coverage through a health insurer must, as sponsors of the program, comply with the reporting requirements. Accordingly, health insurers offering Medicare Advantage and Medicaid managed care plans do not have to meet the reporting requirements with respect to beneficiaries of these programs.

Qualified Health Plans in Individual Market. Qualified Health Plans are not required to report coverage provided to individuals through an Exchange in the individual market. The Exchange is responsible for making reports on these individuals.

This exception will **not** apply to (and a Qualified Health Plan will have to file information about and send statements to) individuals enrolled through a Small Business Health Options Program (SHOP).

notice is required to breaches that involve the loss of data including Social Security Numbers. Similarly, the HIPAA Breach Notification Rule requires notice of a breach that “compromises the security or privacy of the protected health information” and loss of Social Security Numbers is much more likely to result in such compromise. Collection of Social Security Numbers therefore puts insurers and other reporting entities (and their enrollees/members) at greater risk arising out of loss or theft of data.

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For more information, please contact Tom Bixby at (608) 661-4310 or TBixby@tbixbylaw.com

Thomas D. Bixby Law Office LLC

(608) 661-4310 | www.tbixbylaw.com

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