

# Health Reform Update

---

## *ACA Employer Reporting Requirements for 2015, and Then Some*

Sponsored by:

**The Massachusetts Health Connector**

**Springfield Marriott**

Springfield, MA  
April 7, 2015

**Beechwood Hotel**

Worcester, MA  
April 9, 2015

**Newton Marriott**

Newton, MA  
April 14, 2015

Presented by:

**Richard A. Szczebak, Esq.**

Parker Brown Macaulay & Sheerin, P.C.



Parker  
Brown  
Macaulay &  
Sheerin





# Today's Agenda

- ◆ **Employer Reporting on the Forms 1094 and 1095**
- ◆ **Cadillac Tax Notice**
- ◆ **Final Word on PRAs?**
- ◆ **New MA Earned Sick Time Law**
- ◆ **Questions**



**Navigating the ACA in 2015**

# Today's Goal Regarding the Employer Reporting Segment



- ◆ To provide you with some familiarity with both the **FORMS** and the **PROCESS** related to the employer reporting requirements so that you can better **ASSESS**:
  - ▶ The task at hand faced by your clients
  - ▶ The potential demands on your clients' internal resources
  - ▶ Any third-party vendor claims made to you and your clients about reporting compliance services





# The ACA Landscape

- ◆ Establishment of state/federal/partnership insurance exchanges/marketplaces to offer approved health plans to individuals and small groups
- ◆ Individual mandate – purchase essential health coverage or pay penalties to IRS
- ◆ Employers with 50+ FTE employees must offer “substantially all” FT employees (and dependent children) coverage that is affordable and provides minimum value **or pay penalties to IRS if FT employees receive an exchange subsidy**
  - ▶ Employer reporting key to IRS excise tax assessments
- ◆ Certain individuals (incl. employees) may receive subsidies to purchase health coverage in an exchange based on income level
- ◆ Expanded Medicaid eligibility



# The Map for ESR Compliance

---

- ◆ **Determine Applicable Large Employer (ALE) each year**
- ◆ **If an ALE, determine the date any ESR penalties may first become effective**
  - ▶ **One or More Transition Rules may Apply**
- ◆ **Identify full-time EEs who must be offered coverage to avoid penalties**
- ◆ **Determine full-time EE contribution needed to meet affordability standards**
- ◆ **Plan documentation reflecting FT EE eligibility**



◆ **Section 6055/6056 Employer information reporting**

# ESR Penalties Delayed One Year— Due to Lack of Reporting Info

---



- ◆ **Specifically, IRS waived ESR enforcement only in 2014 and only for:**
  - ▶ **The 6055 information reporting requirements applicable to providers of minimum essential coverage (MEC);**
  - ▶ **The 6056 information reporting requirements applicable to applicable large employers; and**
  - ▶ **The obligation to pay excised tax penalties under the ESR provisions (4980H)**
  
- ◆ **Premium tax credits were still available in the Marketplaces for those who qualified in 2014**

# ESR Penalties Delayed One Year– Practical Effect of Delay?

---



- ◆ **Delayed provisions fully effective now in 2015**
- ◆ **Biggest effect was time to implement/prepare:**
  - ▶ **Written plan documentation w/ new eligibility**
  - ▶ **Safe harbor look back measurement rules**
  - ▶ **Timely employee notifications re: measurement**
  - ▶ **Affordability issues, if any**
- ◆ **Free look at which employees in Marketplace in 2014**
- ◆ **Additional transition rules/exceptions created**

# ACA Focus in 2015



## ◆ **Employer Shared Responsibility is HERE**

- ▶ **Reminder: ALE Determination and ESR Penalty Assessments are determined on a calendar year basis**

## ◆ **Information Reporting is REAL**

- ▶ **IRS has released final 2014 Forms and instructions**
  - **Forms 1094 and 1095**
- ▶ **6055 – Information Reporting of Minimum Essential Coverage**
- ▶ **6056 - Information Reporting by Applicable Large Employers on Health Insurance Coverage**
- ▶ **Reminder: Reporting done on a calendar year basis**

## ◆ **Tracking hours vs. Tracking offers and coverage**





## Ultimate Objective

---

- ◆ **The ultimate objective is to be able to defend against an assessment of the A Tax or the B Tax penalty assessments**
- ◆ **Keeping in mind there are violations of the employer mandate without any tax consequence**
- ◆ **Penalty assessments are not tax deductible**

# Excise Tax Penalty Assessments Enforced by IRS

- ◆ Annual report by each ALE member to IRS (6056)
- ◆ Certification of APTC status from Exchange to IRS
- ◆ IRS will use as basis for penalties
- ◆ IRS will contact employers to inform them of potential liability and a chance to respond
- ◆ IRS contact will not occur until after employees file their individual tax returns for that year and after ALE members file 6056 information returns identifying FT employees and coverage offered
- ◆ If determined liable after employer response, IRS will send tax notice and demand for payment – Appeal??
- ◆ IRS will not impose a penalty for incorrect reporting for 2015 offers of coverage as long as the employer makes a good faith effort to comply with the reporting requirements



# Calculation of the A Tax Penalty

- ◆ **Applicable to an ALE member fails to offer MEC to more than 30% of its full-time employees (5% in 2016) for any calendar month, if the ALE member has received a Section 1411 Certification with respect to at least one full-time employee**
- ◆ **There is imposed on the ALE member for the calendar month an assessable payment equal to the product of**
  - ▶ **(1) the number of full-time employees of the ALE member, minus**
    - Full-time employees in a limited non-assessment period and
    - The ALE members allocable share of 80 full-time employees and
  - ▶ **(2) the section 4980H(a) applicable payment amount, which is \$167 per month**



# Calculation of the B Tax Penalty



- ◆ There is imposed on the applicable large employer member an assessable payment equal to the product of
  - ▶ (1) the number of full-time employees of the ALE member for which it has received a Section 1411 Certification minus
    - the number of those employees in a limited non-assessment period for certain employees and
    - the number of other employees who were offered the opportunity to enroll
      - in minimum essential coverage under an eligible employer-sponsored plan
      - that satisfied minimum value and
      - met one or more of the affordability safe harbors, and
  - ▶ (2) the section 4980H(b) applicable payment amount, which is \$250 per month



---

# Affordable Care Act

## Section 6055 and 6056 Information Reporting Requirements

### For 2015

---

#### **Calendar year reporting even if:**

- ▶ The GHP is not calendar year
- ▶ The employer/GHP is in a transition period



# 2014 Employer Reporting

---

- ◆ There is none
- ◆ Information reporting is **voluntary** for calendar year 2014
- ◆ All applicable large employers are required to report health coverage information for the first time in early 2016 for calendar year 2015

# 2015 Employer Reporting in a Nutshell

---

- ◆ **Determine the employees who were FT for at least one month in 2015**
- ◆ **Prepare a 1095-C for each FT employee with a full 12 month history**
- ◆ **Send the employee a copy of his/her 1095-C**
- ◆ **Bundle all 1095-Cs up and file with the IRS with a 1094-C Transmittal Form**



# When to File the Information Reporting for 2015



- ◆ **Both reporting requirements are effective for coverage provided on or after 1/1/15**
- ◆ **Calendar year reports, even if non-calendar plan year**
- ◆ **First information returns to be filed with the IRS and provided to individuals in early 2016 for the 2015 calendar year**
  - ▶ **Employee statements for 2015 must be provided by 2/1/16 (since 1/31/16 falls on Sunday)**
  - ▶ **Reporting to IRS for 2015 due by 2/29/16 (2/28/16 falls on Sunday and it's leap year), or 3/31/16 if filed electronically**
  - ▶ **Electronic filing required if ER is filing 250+ statements**
  - ▶ **ALE members must file their own returns using their own EIN**





# Electronic Filing with IRS

---

- ◆ **250 or more requirement applies to each type of return**
- ◆ **Pub. 5165, Affordable Care Act (ACA) Information Returns (AIR) Guide for Software Developers and Transmitters, currently under development**
- ◆ **You will receive an electronic acknowledgment once you complete the transaction. Keep it with your records**



# Furnishing Forms to Employees

---

- ◆ **Statements must be furnished on paper by mail, unless the recipient affirmatively consents to receive in an electronic format**
- ◆ **Requirement to furnish met if the form is properly addressed and mailed on or before the due date to last known address**
- ◆ **Filers may truncate the SSN to last 4 digits (using \*\*\*\*\* for first 5 digits) for employee statement but not for IRS filing**

# Consent to Furnish Employee Statement Electronically

---



- ◆ **An individual may consent on paper or electronically, such as by email**
- ◆ **If consent is on paper, the individual must confirm the consent electronically**
- ◆ **A statement may be furnished electronically by email or by informing the individual how to access the statement on the employer's website**

# One Form 1095-C for Each FT Employee of Each Employer

---

- ◆ **For each full-time employee of an employer, there must be only one Form 1095-C filed for employment with that employer**
- ◆ **If an employer separately reports for each of its two divisions**
  - ▶ **the employer must combine the offer and coverage information for any employee who worked at both divisions during the calendar year**
  - ▶ **so that a single Form 1095-C is filed for the calendar year for that employee**
  - ▶ **which reports information for all twelve months of the calendar year from that employer**



# One Form 1095-C for Each FT Employee of Each Employer



- ◆ **For any calendar month in which a full-time employee works for more than one ALE Member of an Aggregated ALE Group**
  - ▶ **only one ALE Member is treated as the employer and only that ALE Member reports for that employee for that calendar month**
  - ▶ **Reporting is done by the employer for whom the employee has the greatest number of hours of service for that calendar month;**
  - ▶ **if an equal number of hours of service among two or more employers of the same Aggregated ALE Group for the calendar month, those employers must treat one of the employers as the employer of that employee for that calendar month**

# Reporting MEC Enrollment Information for Non-Employees



- ◆ **Non-Employees include**
  - ▶ Retired employee for entire year
  - ▶ Employee on COBRA entire year
  - ▶ Non-employee COBRA beneficiary
  - ▶ Non-employee director
- ◆ **Insurers report for fully insured plans**
- ◆ **Self-insured employers have 2 choices**
  - ▶ Use Form 1094-B and 1095-B
  - ▶ Use Form 1095-C, Parts I & III, Part II use Code 1G

# Reporting Requirements Apply Starting in 2015



- ◆ **Applicable large employers are subject to certain reporting requirements for full-time employees starting in 2015**
- ◆ **Even for those employers with special circumstances that qualify for transition relief from employer shared responsibility payments for 2015**
- ◆ **Certain reporting requirements also apply to employers that sponsor self-insured coverage, even if the employer is not an applicable large employer**

# Reporting Overview: Two Reporting Requirements



	Minimum Essential Coverage Reporting Under Code § 6055	Applicable Large Employer Reporting Under Code § 6056
<b>Purpose</b>	<b>Verification of the individual mandate</b>	<b>Employer penalties and eligibility for premium tax credits</b>
<b>Who is responsible?</b>	<b>All sponsors of minimum essential coverage (includes employers, multiemployer plans, association plans, insurance carriers)</b>	<b>Large employers only (50+ FTEs)</b>
<b>When is reporting due?</b>	<b>By March 31 (when filed electronically)</b>	<b>By March 31 (when filed electronically)</b>
<b>Forms for filing Returns</b>	<b>1094-B (transmittal form) and 1095-B</b>	<b>1094-C (transmittal form) and 1095-C</b>
<b>Participant Statement</b>	<b>Must be given to each “responsible individual” (generally the employee) by January 31</b>	<b>Must be given to Full-Time Employees by January 31</b>
<b>Who files?</b>	<b>Self-insured = plan sponsor. Insured = insurance carrier</b>	<b>Employer</b>
<b>NOTES</b>	<b>Reporting for large employers is satisfied by submitting the 1094-C and 1095-C forms.</b>	<b>Simplified reporting alternatives apply to certain employers/groups of employees. The alternative methods generally limit the type or amount of information that appears on the Form 1095-C, but do not relieve the employer from preparing separate returns for each FTE. More guidance is required.</b>



# ACA IRS Reporting Form Structure

---



- ◆ **Forms 1094 are ALE Member specific**
  - ▶ for Transmitting copies of the 1095 Forms to the IRS
- ◆ **Forms 1095 are individual employee specific for**
  - ▶ Reporting information to the IRS
  - ▶ Providing summary statements to individuals
- ◆ **C Forms are used by ALE Members**
- ◆ **B Forms are used by insurers and other coverage providers**
- ◆ **A Forms are used by Exchanges to report individual coverage information to the IRS**



---

# Form 1095-B Health Coverage (MEC)

Section 6055 reporting entities that are not ALE members or are not reporting in their capacity as employers, such as:

- health insurance issuers,
- self-insured multiemployer plans, and
- providers of government-sponsored coverage

will report under section 6055 on Form 1095-B

# Form 1095-B

Health insurers will file with IRS and provide employee statements for fully insured plans



IRS filing required for ALL enrolled employees (even if enrolled for a single month)

Employee Statement must be provided to ALL enrolled employees

560115  
OMB No. 1545-2252  
**2014**

Form **1095-B** **Health Coverage**  VOID  CORRECTED

Department of the Treasury Internal Revenue Service **► Information about Form 1095-B and its separate instructions is at [www.irs.gov/form1095b](http://www.irs.gov/form1095b).**

**Part I Responsible Individual (Policy Holder)**

1 Name of responsible individual 2 Social security number (SSN) 3 Date of birth (if SSN is not available)

4 Street address (including apartment no.) 5 City or town 6 State or province 7 Country and ZIP or foreign postal code

8 Enter letter identifying Origin of the Policy (see instructions for codes):  9 Small Business Health Options Program (SHOP) Marketplace identifier, if applicable

**Part II Employer Sponsored Coverage (If Line 8 is A or B, complete this part.)**

10 Employer name 11 Employer identification number (EIN)

12 Street address (including room or suite no.) 13 City or town 14 State or province 15 Country and ZIP or foreign postal code

**Part III Issuer or Other Coverage Provider**

16 Name 17 Employer identification number (EIN) 18 Contact telephone number

19 Street address (including room or suite no.) 20 City or town 21 State or province 22 Country and ZIP or foreign postal code

**Part IV Covered Individuals (Enter the information for each covered individual(s).)**

(a) Name of covered individual(s)	(b) SSN	(c) DOB (if SSN is not available)	(d) Covered all 12 months	(e) Months of coverage												
				Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
23			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
24			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
25			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
26			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
27			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
28			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 60704E Form **1095-B** (2014)

This is the ACA equivalent of the MA Form 1099-HC





---

# Form 1094-B Transmittal of Health Coverage Information Returns

# Form 1094-B



MASSACHUSETTS  
**HEALTH**  
CONNECTOR  
Form **1094-B**

## Transmittal of Health Coverage Information Returns

1115

OMB No. 1545-2252

**2014**

Department of the Treasury  
Internal Revenue Service

► Information about Form 1094-B and its separate instructions is at [www.irs.gov/form1094b](http://www.irs.gov/form1094b).

<b>1</b> Filer's name		<b>2</b> Employer identification number (EIN)	
<b>3</b> Name of person to contact		<b>4</b> Contact telephone number	
<b>5</b> Street address (including room or suite no.)		<b>6</b> City or town	
<b>7</b> State or province		<b>8</b> Country and ZIP or foreign postal code	
<b>9</b> Total number of Forms 1095-B submitted with this transmittal . . . . . ►			

**For Official Use Only**

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and, to the best of my knowledge and belief, they are true, correct and complete.

Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 61570P

Form **1094-B** (2014)



---

# Form 1095-C Employer Provided Health Insurance Offer and Coverage

# Form 1095-C



Form **1095-C**  
Department of the Treasury  
Internal Revenue Service

## Employer-Provided Health Insurance Offer and Coverage

Information about Form 1095-C and its separate instructions is at [www.irs.gov/1095c](http://www.irs.gov/1095c).

VOID  
 CORRECTED

600115  
OMB No. 1545-2251  
**2014**

Part I Employee						Applicable Large Employer Member (Employer)						
1 Name of employee		2 Social security number (SSN)		7 Name of employer			8 Employer identification number (EIN)					
3 Street address (including apartment no.)						9 Street address (including room or suite no.)			10 Contact telephone number			
4 City or town		5 State or province		6 Country and ZIP or foreign postal code		11 City or town		12 State or province		13 Country and ZIP or foreign postal code		

Part II Employee Offer and Coverage	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)													
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)													

**Part III Covered Individuals**  
If Employer provided self-insured coverage, check the box and enter the information for each covered individual.

(a) Name of covered individual(s)	(b) SSN	(c) DOB (if SSN is not available)	(d) Covered all 12 months	(e) Months of Coverage											
				Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
17			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 80705M Form **1095-C** (2014)

IRS filing required for all FT employees (even if not enrolled)  
Employee Statement must be provided to all FT employees



# Form 1095-C

## Employer Provided Health Insurance Offer and Coverage

---



- ◆ **Provide to full-time employees to use when filing their tax returns**
- ◆ **File with the IRS as an information return**
- ◆ **Reports information about health insurance coverage offered and any safe harbors or other relief available to the employer, or reports that no offer of coverage was made**
- ◆ **Helps the IRS determine if your organization potentially owes an employer shared responsibility excise tax payment to the IRS**
- ◆ **Helps the IRS determine whether your full-time employees and their dependents are eligible for the premium tax credit**



# To Prepare to Report to the IRS and Issue the New Form 1095-C, You'll Need to:

---

- ◆ **Determine if your organization is an applicable large employer (based on 2014)**
- ◆ **Determine the kind of health insurance coverage you offered to full-time employees and their dependents, if any, each month**
- ◆ **Identify who your full-time employees are for each month in 2015 and**
- ◆ **Track offers of health coverage in 2015 to help complete the new IRS forms**



# Employee Offer and Coverage



- ◆ **Offering coverage to a FT employee generally means that the employee was eligible for coverage under the plan**
- ◆ **A code must be entered for each calendar month, January thru December, even if the employee was not FT for one or more of the calendar months**
- ◆ **An employer offers coverage for a month only if it offers coverage that would provide coverage for every day of the calendar month**
- ◆ **what about new FT hires starting other than on the first of the month or FT employees terminating mid-month?**

# Employee Offer and Coverage



- ◆ **New FT employees with start dates other than day 1 of the month may not be treated as having been offered coverage for that month**
  - ▶ However, the first calendar month of employment is considered a Limited Non-Assessment Period – Series 2 **Code: 2D**
  
- ◆ **FT employees terminating mid-month may be treated as having been offered coverage for the full month, even if coverage terms on employee's termination date -- **Code: 2B****
  - ▶ If an employee terminates employment before the last day of a calendar month and the health coverage offer ends on the date of termination,
  - ▶ Then the employer is treated as having offered the employee health coverage for the month only if:
  - ▶ The employee would have been offered health coverage for the entire month had the employee been employed for the entire month

# ALE Members Participating in Multiemployer Plans

---



**Employers are treated as offering health coverage to an employee if:**

- ◆ **the employer is subject to a collective bargaining agreement or related participation agreement and is required by such agreement . . .**
- ◆ **to make contributions for that employee to a multiemployer plan that offers, to individuals who satisfy the plan's eligibility conditions**
  - ▶ **health coverage that is affordable and**
  - ▶ **provides minimum value, and**
  - ▶ **offers health coverage to those individuals' dependents or is eligible for the section 4980H transition relief regarding offers of coverage to dependents**

# ALE Members Participating in Staffing Firm Arrangements



**Employers are treated as offering health coverage to an employee supplied by a staffing firm IF:**

- ◆ **The employee is performing services for an employer that is a client of a staffing firm AND the staffing firm is NOT the common law employer of the employee, and**
- ◆ **the staffing firm makes an offer of medical coverage to the employee on behalf of the client employer under a plan established or maintained by the staffing firm,**
- ◆ **THEN, the offer is treated as made by the client employer for purposes of section 4980H only if**
- ◆ **the fee the client employer pays to the staffing firm for an employee enrolled in medical coverage is higher than the fee the client employer would pay the staffing firm for the same employee not enrolled in health coverage under the plan**

# What you'll need for Form 1095-C

---

- ◆ **Who is a full-time employee for each month**
- ◆ **Identifying information for employer and employee such as name and address**
- ◆ **Information about the health coverage offered by month, if any, for FT employees**
- ◆ **The employee's share of the monthly premium for lowest-cost self-only minimum value coverage**
- ◆ **Months the employee was enrolled in your coverage**
- ◆ **Months the employer met an affordability safe harbor with respect to an employee and whether other relief applies for an employee for a month**
- ◆ **If the employer offers a self-insured plan, information about the covered individuals enrolled in the plan, by month**



# Form 1095-C, Parts I and II



MASSACHUSETTS  
HEALTH  
CONNECTOR

Form **1095-C**

Department of the Treasury  
Internal Revenue Service

## Employer-Provided Health Insurance Offer and Coverage

► Information about Form 1095-C and its separate instructions is at [www.irs.gov/f1095c](http://www.irs.gov/f1095c).

VOID

CORRECTED

600115

OMB No. 1545-2251

**2014**

Part I Employee			Applicable Large Employer Member (Employer)		
1 Name of employee	2 Social security number (SSN)	7 Name of employer	8 Employer identification number (EIN)		
3 Street address (including apartment no.)			9 Street address (including room or suite no.)		10 Contact telephone number
4 City or town	5 State or province	6 Country and ZIP or foreign postal code	11 City or town	12 State or province	13 Country and ZIP or foreign postal code

Part II Employee Offer and Coverage	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)	SERIES 1 Codes												
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)	SERIES 2 Codes												

# Series 1 Codes: Type of Coverage Offer



**Series 1 Codes tell the IRS whether coverage was offered and the type of coverage offered**

Code	Description of Code
1A	Qualifying Offer: MEC coverage meeting MV and affordability (based on the FPL safe harbor) offered to FT employee; MEC offered to spouse and children
1B*	MEC meeting MV offered to employee only
1C*	MEC meeting MV offered to employee; at least MEC offered to children
1D*	MEC meeting MV offered to employee; at least MEC offered to spouse
1E*	MEC meeting MV offered to employee; at least MEC offered to spouse and children
1F	MEC that is not MV offered to employee and/or spouse and/or children (<60% actuarial value)
1G	Offer of coverage to an employee who was not a FT employee for any month of the CY, AND who was enrolled in self-insured coverage for 1 or more months in the CY
1H	No offer of coverage; not offered any coverage or not offered MEC
1I	Qualifying Offer Transition Relief 2015: Employee (and spouse or children) received no offer of coverage, received an offer that was not qualifying offer, or received a qualifying offer for less than 12 months

**\*For 1B through 1E, must also fill in line #15. For all other codes on line #14, do not fill in line #15**



# Series 2 Codes: 4890H Penalty Defense



Series 2 Codes tell the IRS whether a 4980H Safe Harbor applies

Code	Description of Code
2A	Employee is not employed on any day during the calendar month.
2B	Employee is not a FT employee for the month and did not enroll in MED, if offered for the month; or Employee is a FT employee whose eligibility /coverage ended before last day of month solely due to termination of employment.
2C	Employee is enrolled in the coverage offered by the employer; enter this code regardless of whether any other Safe Harbor code applies ( <u>exception</u> : code 2E)
2D	Employee is in section 4980H(b) Limited Non-Assessment Period
2E	Employee is a collectively-bargained employee for whom the multiemployer interim guidance applies generally Taft-Hartley plans
2F	Form W2 Safe Harbor; employee monthly contribution for lowest cost, self-only option providing MV is less than or equal to 9.5% of Form W2 wages for entire CY
2G	Federal Poverty Line Safe Harbor; employee monthly contribution for lowest cost, self-only option providing MV is less than or equal to 9.5% to 1/12 of the mainland FPL for single individual
2H	Rate of Pay Safe Harbor; employee monthly contribution for lowest cost, self-only option providing MV is less than or equal to 9.5% of 130 hours times the employee's hourly rate of pay (or lowest hourly rate of pay during calendar month, if lower)
2I	Non-calendar year transition relief applies

# Code 2D

## Limited Non-Assessment Periods

- ◆ First Calendar Month of Employment
- ◆ First Year as ALE Period. January through March of the first calendar year in which an employer is an ALE
  - ▶ But only for an employee who was not offered health coverage by the employer at any point during the prior calendar year
  - ▶ If using in 2015, can't be an ALE in 2014 based on 2013
- ◆ Waiting Period under the Monthly Measurement Method
- ◆ Waiting Period under the Look-Back Measurement Method
- ◆ Initial Measurement Period and Associated Administrative Period under the Look-Back Measurement Method
- ◆ Period Following Change in Status that Occurs During Initial Measurement Period Under the Look-Back Measurement Method

All but the first bullet are LNAPs only if MV coverage is offered to the employee by the 1<sup>st</sup> day of the 1<sup>st</sup> month following the end of the applicable period



# Waiting Periods Under Measurement Methods

---



- ◆ **An employer that sponsors a group health plan that offers coverage to a FT employee will not be subject to an assessable payment under section 4980H IF**
  - ▶ **The employee is offered coverage no later than the day after the end of three full months of employment**
  - ▶ **Beginning with the first full month in which the employee is otherwise eligible for an offer of coverage**
    - **Meets all conditions to be offered coverage other than completion of the waiting period**

# Waiting Periods Under Measurement Methods

---



- ◆ **Under the look back method** – applies to new employee who, at his or her start date, is reasonably expected to be a FT employee
- ◆ **Under the monthly measurement method** – relief applies only once per period of employment
  - ▶ Even if employee terminates before the date (and before coverage is offered)
  - ▶ Rehire rules apply if at least 13 week break in service

# Codes 2F, G, H

## Safe Harbor Affordability



- ◆ **Code 2F -- Form W-2 SH** – Form W-2, Box 1 income for months during which the EE was eligible for coverage
  - ▶ Applied after year end and on EE by EE basis
  - ▶ Adjusted if EE not employed the entire year
- ◆ **Code 2G -- Federal Poverty Line SH** – FPL for a single individual. For 10/1/2013, FPL = \$11,490
  - ▶ May use most recent FPL guidelines as of 1<sup>st</sup> day of PY
- ◆ **Code 2H -- Rate of Pay SH** – Salaried EE's monthly salary, OR hourly EE's rate of pay X 130 hrs for months during which the EE was eligible for coverage
  - ▶ Rate of pay as of first day of plan year. If rate reduced, use the lower rate

# Form 1095-C, Part II



Part II Employee Offer and Coverage													
	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)	SERIES 1 Codes												
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)	SERIES 2 Codes												

Type of Coverage Offer  
Offer = Eligibility

4980H Penalty Defense

- Complete line 15 ONLY IF Code 1B, 1C, 1D, or 1E is entered on line 14
- Enter the amount including any cents
- If the employee is not required to contribute any amount towards the premium, enter "0.00" (do not leave blank)

# Form 1095-C, Part III



Used only by ALE members with self-insured plans

Check this box ONLY if using Part III as self – insured employer

**Don't Forget**  
This Part III can be used in lieu of 1095-B to report MEC coverage for individuals who were not an employee for any month of the calendar year. Use Code 1G on line 14 in Part II of the 1095-C

**Part III Covered Individuals**  
If Employer provided self-insured coverage, check the box and enter the information for each covered individual.

(a) Name of covered Individual(s)	(b) SSN	(c) DOB (if SSN is not available)	(d) Covered all 12 months	(e) Months of Coverage												
				Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	
17			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. CaL No. 80705M **Form 1095-C** (2014)

This is the ACA equivalent of the MA Form 1099-HC

Not required for insured coverage, or for any employee who is not enrolled





---

# **Form 1094-C Transmittal of Employer Provided Health Insurance Offer and Coverage Info Returns**



# Form 1094-C

## Transmittal of Employer Provided Health Insurance Offer and Coverage Info Returns

---



- ◆ **File with the IRS as a transmittal document for Forms 1095-C, *Employer Provided Health Insurance Offer and Coverage***
- ◆ **Provides a summary to the IRS of aggregate employer-level data**
- ◆ **Helps the IRS determine whether an employer is subject to an employer shared responsibility payment and the proposed payment amount**



## The Authoritative Transmittal

---

- ◆ **The Authoritative Transmittal includes the aggregate level information for the employer**
- ◆ **One Authoritative Transmittal must be filed for each employer even if multiple Forms 1094-C are filed by a single employer**
- ◆ **If an Aggregated ALE Group, each separate employer (ALE Member) must file its own Authoritative Transmittal**
- ◆ **If employer submits its Forms 1095-C in batches, each batch must be accompanied by a Form 1094-C, BUT only one 1094-C should be filed as the authoritative transmittal**

# Submitting 1095-Cs in Batches

---

**EXAMPLE -- Divisions A and B of Omega, Inc. each submit their 1095-C Forms to the IRS in separate batches, accompanied by a Form 1094-C**

- ◆ **Only one 1094-C should include aggregate level info for Omega, Inc. as the Authoritative Transmittal. For example, Division B will file the Authoritative Transmittal**
- ◆ **Division A's 1094-C transmittal has Part I completed, including the number of 1095-C's submitted with the transmittal, and is signed**
- ◆ **Division B's 1094-C Authoritative Transmittal has Parts I thru IV completed and is signed, including the number of 1095-Cs submitted with the Authoritative Transmittal, AND the total number of 1095-Cs submitted by Omega, Inc. (Divisions A and B combined)**



# What you'll need for Form 1094-C

---

- ◆ **Identifying information for your organization**
- ◆ **Information about whether you offered coverage to at least 70% of your full-time employees and their dependents in 2015**
  - ▶ **After 2015 this threshold changes to 95%**
- ◆ **For the Authoritative Transmittal**
  - ▶ **Total number of Forms 1095-C you issued to employees**
  - ▶ **Information about members of the Aggregated ALE Group, if any**
  - ▶ **Full time employee counts by month**
  - ▶ **Total employee counts by month**
  - ▶ **Whether you are eligible for certain transition relief**



# 1094-C, Part I Transmittal Form



Form **1094-C**

Department of the Treasury  
Internal Revenue Service

## Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns

► Information about Form 1094-C and its separate instructions is at [www.irs.gov/1094c](http://www.irs.gov/1094c).

CORRECTED

120115  
OMB No. 1545-2251

**2014**

### Part I Applicable Large Employer Member (ALE Member)

1 Name of ALE Member (Employer)		2 Employer identification number (EIN)	
3 Street address (including room or suite no.)			
4 City or town	5 State or province	6 Country and ZIP or foreign postal code	
7 Name of person to contact		8 Contact telephone number	
9 Name of Designated Government Entity (only if applicable)		10 Employer identification number (EIN)	
11 Street address (including room or suite no.)			
12 City or town	13 State or province	14 Country and ZIP or foreign postal code	
15 Name of person to contact		16 Contact telephone number	

For Official Use Only



17 Reserved

18 Total number of Forms 1095-C submitted with this transmittal

Insert only the number of 1095-Cs attached to this transmittal

# Form 1094-C, Part II Transmittal Form



Same # entered for Part I, Line 18  
EXCEPT if 1095-Cs were sent in  
batches by same employer

Check Box 19  
if the  
Authoritative  
transmittal

**Part II ALE Member Information**

19 Is this the authoritative transmittal for this ALE Member? If "Yes," check the box and continue. If "No," see instructions

20 Total number of Forms 1095-C filed by and/or on behalf of ALE Member

21 Is ALE Member a member of an Aggregated ALE Group?  Yes  No  
If "No," do not complete Part IV.

22 Certifications of Eligibility (select all that apply):

A. Qualifying Offer Method     B. Qualifying Offer Method Transition Relief     C. Section 4980H Transition Relief     D. 98% Offer Method

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and to the best of my knowledge and belief, they are true, correct, and complete.

Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.      Cat. No. 61571A      Form 1094-C (2014)

Check if 100+ FTEs in 2014 or 50 to 99  
FTEs in 2014 and using transition relief

If Not an Aggregated  
ALE Member Check  
NO and skip Part IV

# Line 22C. Section 4980H Transition Relief



- ◆ **Check box C in Line 22 if the employer is eligible for section 4980H Transition Relief if either apply:**
  - ▶ **2015 Section 4980H Transition Relief for ALEs with Fewer Than 100 Full-Time Employees, Including Full-Time Equivalent Employees (50-99 Transition Relief), or**
  - ▶ **2015 Transition Relief for Calculation of Assessable Payments Under Section 4980H(a) for ALEs with 100 or More Full-Time Employees, Including Full-Time Equivalent Employees (100 or More Transition Relief)**

# Form 1094-C, Part III Transmittal Form



MASSACHUSETTS  
HEALTH  
CONNECTOR

Form 1094-C (2014)  
**Part III ALE Member Information – Monthly**

		(a) Minimum Essential Coverage Offer Indicator		(b) Full-Time Employee Count for ALE Member	(c) Total Employee Count for ALE Member	(d) Aggregated Group Indicator	(e) Section 4980H Transition Relief Indicator
		Yes	No				
23	All 12 Months	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
24	Jan	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
25	Feb	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
26	Mar	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
27	Apr	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
28	May	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
29	June	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
30	July	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
31	Aug	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
32	Sept	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
33	Oct	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
34	Nov	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
35	Dec	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	

The 70% safe harbor test for 2015 – do not include employees in a LNAP

Do not count any FT employee in a Limited Non-Assessment Period (LNAP)

FT + PT + LNAP

Transition Relief Indicator  
Enter "A" for 50 to 99 relief  
Enter "B" for 100+ relief



# Part III, Column (c) Total Employee Count for ALE Member



- ◆ Enter the total number of employees, including full-time employees and non-full-time employees and employees in a Limited Non-Assessment Period, for each calendar month
- ◆ An employer must choose to use one of the following days to determine the number of employees per month and must use the same day for all months of the year:
  - ▶ first day of each month
  - ▶ last day of each month
  - ▶ first day of the first payroll period that starts during each month or
  - ▶ last day of the first payroll period that starts during each month
- ▶ If the total number of employees was the same for every month of the entire calendar year, enter that number in line 23, column (c) “All 12 Months”
- ▶ If the number of employees for any month is zero, enter 0

# Form 1094-C, Part IV Transmittal Form



**Part IV Other ALE Members of Aggregated ALE Group**

Enter the names and EINs of Other ALE Members of the Aggregated ALE Group (who were members at any time during the calendar year).

Name	EIN	Name	EIN
36		51	
37		52	
38		53	
39		54	
40			
41			
42			
43		58	
44		59	
45		60	
46		61	
47		62	
48		63	
49		64	
50		65	

List in descending order beginning with the ALE Member of the group with the highest monthly average of FT employees



## Bottom Line . . . .

---

- ◆ **Small ERs (under 50) should have no filing requirements UNLESS they**
  - ▶ Are part of an Aggregated ALE Group
  - ▶ Are part of a self-insured multiemployer plan
- ◆ **Mid sized ERs (50 to 99) will need to file the “C” Forms for their FT employees even if in a transition period from the ESR penalties**
  - ▶ MEC reporting will be done by the carrier if fully insured
- ◆ **Large ERs (100+) will need to file the “C” Forms for their FT employees even if in a transition period from the ESR penalties**
  - ▶ MEC reporting will be done by the carrier if fully insured



# Examples 1095-C

# 1095-C Example (1)



- ◆ Full-Time Employee is offered Minimum Essential Coverage meeting Minimum Value for the entire year. Plan is a calendar year plan. Employee is enrolled for the entire year.
- ◆ The single (individual-only) cost for the lowest option is \$105/month is Affordable based on the Rate of Pay safe harbor calculation.
- ◆ MEC is also offered to spouse and children.

Part II Employee Offer and Coverage													
	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)	1E												
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$ 105	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)	2C												

# 1095-C Example (2)



- ◆ Full-Time Employee is offered Minimum Essential Coverage meeting Minimum Value for the entire year. Plan has a June 1<sup>st</sup> plan year. Employee is enrolled for the entire year.
- ◆ The single (individual-only) cost for the lowest option is \$105/month for PY ending 5/30/15 and \$120 for the PY beginning 6/1/15. Both are Affordable based on the Rate of Pay safe harbor calculation.
- ◆ MEC is also offered to spouse and children.

Part II Employee Offer and Coverage													
	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)	1E												
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$ 105	\$ 105	\$ 105	\$ 105	\$ 105	\$ 120	\$ 120	\$ 120	\$ 120	\$ 120	\$ 120	\$ 120
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)	2C												

# 1095-C Example (3)



- ◆ Full-Time Employee is offered Minimum Essential Coverage meeting Minimum Value for the entire year. Plan is a calendar year plan. Employee has waived coverage for the entire year because covered under spouses plan.
- ◆ The single (individual-only) cost for the lowest option is \$105/month is Affordable based on the Rate of Pay safe harbor calculation.
- ◆ MEC is also offered to spouse and children.

Part II Employee Offer and Coverage													
	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)	1E												
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$ 105	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)	2H												

# 1095-C Example (4)



- ◆ Full-Time Employee is hired on July 1<sup>st</sup> and is offered Minimum Essential Coverage meeting Minimum Value for last 6 months of the year. Employee enrolls effective DOH – July 1, 2015
- ◆ The single (individual-only) cost for the lowest option is \$105/month. This is Affordable based on the Rate of Pay safe harbor calculation.
- ◆ MEC is also offered to spouse and children.

Part II Employee Offer and Coverage													
	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)		1H	1H	1H	1H	1H	1H	1E	1E	1E	1E	1E	1E
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$	\$	\$	\$	\$	\$	\$ 105	\$ 105	\$ 105	\$ 105	\$ 105	\$ 105
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)		2A	2A	2A	2A	2A	2A	2C	2C	2C	2C	2C	2C



# 1095-C Example (5)



- ◆ Full-Time Employee is hired on May 15<sup>th</sup> and is offered Minimum Essential Coverage meeting Minimum Value effective June 1<sup>st</sup> (first of the month following date of hire). Employee waives offered coverage.
- ◆ The single (individual-only) cost for the lowest option is \$105/month. This is Affordable based on the Rate of Pay safe harbor calculation.
- ◆ MEC is also offered to spouse and children.

Part II Employee Offer and Coverage													
	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)		1H	1H	1H	1H	1H	1E	1E	1E	1E	1E	1E	1E
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$	\$	\$	\$	\$	\$ 105	\$ 105	\$ 105	\$ 105	\$ 105	\$ 105	\$ 105
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)		2A	2A	2A	2A	2D	2F	2F	2F	2F	2F	2F	2F

# 1095-C Example (6)



- ◆ Long time FT employee enrolled in MEC health coverage meeting MV terminates employment May 17, 2015 and does not elect the COBRA coverage offered to him.
- ◆ The single (individual-only) cost for the lowest option is \$105/month, which is Affordable based on Rate of Pay safe harbor.
- ◆ Coverage is fully insured and, had employee not terminated, coverage would have been offered through the end of the month.

Part II Employee Offer and Coverage													
	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)		1E	1E	1E	1E	1E	1H	1H	1H	1H	1H	1H	1H
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$ 105	\$ 105	\$ 105	\$ 105	\$ 105	\$	\$	\$	\$	\$	\$	\$
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)		2C	2C	2C	2C	2B	2A	2A	2A	2A	2A	2A	2A

- ◆ Insurer will do MEC reporting on Form 1095-B.



# 1094-C - Example

- ◆ Johnny Mack owns 100% of a marketing company, JM Marketing, Inc., employing about 120 people, 110 of which are FT at any given time during the year
- ◆ Later, Johnny's ERISA attorney learns that Johnny also owns 100% of a luncheonette, named “The Deli” which currently employs about 20 people
- ◆ Finally, Johnny indicates that his penchant for gardening turned into a small farm a few years ago, called Green Acres Farm, which employs about 5 people
- ◆ JM Marketing, Inc. sponsors a group health plan for its employees, insured through Aetna. It has an 8/1 plan year. Coverage is offered to all FT employees (30+ hours)
- ◆ No health coverage is provided by the other 2 businesses





# 1094-C for JM Marketing

Form <b>1094-C</b> Department of the Treasury Internal Revenue Service	<b>Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns</b> ► Information about Form 1094-C and its separate instructions is at <a href="http://www.irs.gov/1094c">www.irs.gov/1094c</a> .	<input type="checkbox"/> CORRECTED	2015 OMB No. 1545-2251 <b>2014</b>
--	---	------------------------------------	--

<b>Part I Applicable Large Employer Member (ALE Member)</b>					
1 Name of ALE Member (Employer) <b>JM Marketing, Inc.</b>			2 Employer identification number (EIN)		
3 Street address (including room or suite no.)					
4 City or town		5 State or province		6 Country and ZIP or foreign postal code	
7 Name of person to contact			8 Contact telephone number		
9 Name of Designated Government Entity (only if applicable)			10 Employer identification number (EIN)		
11 Street address (including room or suite no.)					
12 City or town		13 State or province		14 Country and ZIP or foreign postal code	
15 Name of person to contact			16 Contact telephone number		
<b>For Official Use Only</b>					
17 Reserved <span style="float: right;"><input type="checkbox"/></span>					
18 Total number of Forms 1095-C submitted with this transmittal <span style="float: right;">▶ 134</span>					

<b>Part II ALE Member Information</b>	
19 Is this the authoritative transmittal for this ALE Member? If "Yes," check the box and continue. If "No," see instructions <span style="float: right;"><input checked="" type="checkbox"/></span>	
20 Total number of Forms 1095-C filed by and/or on behalf of ALE Member <span style="float: right;">▶ 134</span>	
21 Is ALE Member a member of an Aggregated ALE Group? <span style="float: right;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</span>	
If "No," do not complete Part IV.	
22 Certifications of Eligibility (select all that apply):	
<input type="checkbox"/> A. Qualifying Offer Method <input type="checkbox"/> B. Qualifying Offer Method Transition Relief <input checked="" type="checkbox"/> C. Section 4980H Transition Relief <input type="checkbox"/> D. 98% Offer Method	

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and to the best of my knowledge and belief, they are true, correct, and complete.

Signature	Title	Date
-----------	-------	------





# 1094-C for JM Marketing

120215  
Page 2

Form 1094-C (2014)

**Part III ALE Member Information – Monthly**

		(a) Minimum Essential Coverage Offer Indicator		(b) Full-Time Employee Count for ALE Member	(c) Total Employee Count for ALE Member	(d) Aggregated Group Indicator	(e) Section 4980H Transition Relief Indicator
		Yes	No				
23	All 12 Months	<input checked="" type="checkbox"/>	<input type="checkbox"/>			<input checked="" type="checkbox"/>	
24	Jan	<input type="checkbox"/>	<input type="checkbox"/>	110	120	<input type="checkbox"/>	B
25	Feb	<input type="checkbox"/>	<input type="checkbox"/>	109	119	<input type="checkbox"/>	B
26	Mar	<input type="checkbox"/>	<input type="checkbox"/>	111	121	<input type="checkbox"/>	B
27	Apr	<input type="checkbox"/>	<input type="checkbox"/>	108	118	<input type="checkbox"/>	B
28	May	<input type="checkbox"/>	<input type="checkbox"/>	109	119	<input type="checkbox"/>	B
29	June	<input type="checkbox"/>	<input type="checkbox"/>	110	120	<input type="checkbox"/>	B
30	July	<input type="checkbox"/>	<input type="checkbox"/>	110	120	<input type="checkbox"/>	B
31	Aug	<input type="checkbox"/>	<input type="checkbox"/>	112	122	<input type="checkbox"/>	
32	Sept	<input type="checkbox"/>	<input type="checkbox"/>	110	120	<input type="checkbox"/>	
33	Oct	<input type="checkbox"/>	<input type="checkbox"/>	110	120	<input type="checkbox"/>	
34	Nov	<input type="checkbox"/>	<input type="checkbox"/>	110	120	<input type="checkbox"/>	
35	Dec	<input type="checkbox"/>	<input type="checkbox"/>	111	121	<input type="checkbox"/>	





# 1094-C for JM Marketing

120315

Page 3

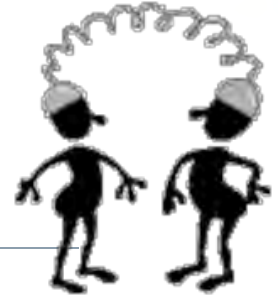
Form 1094-C (2014)

**Part IV Other ALE Members of Aggregated ALE Group**

Enter the names and EINs of Other ALE Members of the Aggregated ALE Group (who were members at any time during the calendar year).

Name	EIN		Name	EIN
36 The Deli	xx-xxxxxxx	51		
37 Green Acres Farm	yy-yyyyyyy	52		
38		53		
39		54		
40		55		

# Helping Clients Navigate Employer Reporting



- ◆ **Start NOW; engage your clients if you haven't already**
- ◆ **OK to acknowledge that employer reporting is complex, perhaps more so depending on the employer's employee population and industry**
  - ▶ **Avoidance/denial is a mistake**
- ◆ **Help your client to break down the process into pieces**
- ◆ **Keep in mind that the process should be easier in the future once everyone has done it for 2015**
- ◆ **Your client should assemble a team and perhaps designate one team member as the reporting czar**
- ◆ **Administrative responsibility but not legal liability may be delegated – there must be oversight of any 3<sup>rd</sup> party vendors involved**
- ◆ **Suggest any vendor do a practice run in July/August based on the first 6 months of data for 2015**



# IRS Notices 2015-16 and 2015-17

---



## Notice 2015-16 Excise Tax on High Cost Employer- Sponsored Health Coverage (a/k/a the Cadillac Plan Tax)

# Quick Cadillac Tax Background

---



- ◆ **Tax added to Code section 4980I by the ACA**
- ◆ **Tax effective for taxable years after 12/31/17**
- ◆ **Tax not deductible for federal income tax purposes**
- ◆ **The aggregate cost of applicable coverage provided to employee exceeding a statutory dollar limit is subject to a 40% excise tax**
- ◆ **Statutory limits for 2018 are \$10,200 for self-only coverage and \$27,500 for coverage that is not self-only**
  - ▶ **Possible one time adjustment to these limits in 2018 if cost growth in a benchmark plan between 2010 and 2018 exceeds 55%**
  - ▶ **Beginning in 2019 the dollar limits will be subject to annual cost of living adjustments**

# Quick Cadillac Tax Background

---



- ◆ **Cost of coverage determined on a monthly basis**
- ◆ **Liability for the payment of the Tax is allocated based on the type of coverage offered:**
  - ▶ **Health insurers pay the Tax if assessed against an insured plan**
  - ▶ **Employers pay the Tax if assessed against employer contributions to an HSA or an Archer MSA**
  - ▶ **The “person administering the plan” pays the Tax if assessed against any other type of coverage**
- ◆ **Employers are responsible to calculate the Tax and notify the liable entity**



# IRS Notice 2015-16

---

- ◆ **The Notice does not offer guidance on which employers may rely**
- ◆ **Provides insight into how IRS is thinking about the 40% excise tax and direction it is heading**
- ◆ **IRS plans several steps in the regulatory process:**
  - ▶ **Current Notice 2015-16 and request for public comment**
  - ▶ **2<sup>nd</sup> Notice to include procedural issues related to the calculation and assessment of the Tax and request for public comment**
  - ▶ **Proposed regulations after considering comments**
  - ▶ **Final regulations after considering comments on the proposed regulations**

# Three Main Subjects Addressed

---



- ◆ **The crux of the Notice is a description of potential approaches to the following 3 issues:**
  - ▶ **The definition of applicable coverage subject to the Tax**
  - ▶ **The determination of the cost of that applicable coverage**
    - Will generally follow COBRA rules. Some adjustments may be required and may apply to COBRA as well
  - ▶ **Applying the statutory dollar limits to the cost of applicable coverage**
    - Dollar limit adjustments based on retirement status, high risk professions, age or gender
    - Cases where employee has mix of single only coverage and coverage includes dependents



# Applicable Coverage

---

- ◆ Includes all GHP coverage excludable from employee income (or would be if paid by the employer)
- ◆ Both insured and self-insured coverage are included
- ◆ Doesn't matter if coverage is paid for by the employer with pre-tax or by the employee with after-tax dollars
- ◆ Likely not to be included in applicable coverage:
  - ▶ Long term care insurance
  - ▶ Dental and vision insurance covered by a separate policy (and also probably self-insured coverage)
  - ▶ After-tax employee HSA/Archer MSA contributions
  - ▶ After-tax employee contributions for specified disease or indemnity insurance
  - ▶ EAPs

# Applicable Coverage

- ◆ **Types of coverage Likely to be included in applicable coverage:**
  - ▶ **Health reimbursement arrangements (HRAs)**
  - ▶ **Employer/employee contributions to health FSAs**
  - ▶ **Employer or employee pre-tax contributions to HSAs**
  - ▶ **Employer or employee pre-tax contributions to Archer MSAs**
  - ▶ **Plans maintained for civilian employees of federal/state/local governments**
  - ▶ **On-site medical clinics (except if providing free de minimus care )**
  - ▶ **Retiree coverage**
  - ▶ **Executive physical programs**
  - ▶ **Multiemployer plan coverage**
  - ▶ **Pre-tax employee contributions for specified disease or indemnity insurance**



# IRS Notices 2015-16 and 2015-17

---



## Notice 2015-17 Temporary Safe Harbor for Some Employer Payment Plans





# Employee Payment Plans

---

- ◆ **The term “Employer Payment Plan” was created in IRS Notice 2013-54 (DOL TR 2013-03)**
- ◆ **An Employer Payment Plan (EPP) is any arrangement through which an employer pays directly or indirectly, an employee's premiums:**
  - ▶ **for major medical coverage**
  - ▶ **purchased in the individual market (inside or outside an exchange)**
  - ▶ **and/or Medicare Part B or Part D premium**
  - ▶ **no matter how the arrangement is structured or what it is called**



# IRS Notice 2017-15

---

- ◆ **5th in a series of IRS guidance on EPPs**
- ◆ **Clarifies the essential theme:**
  - ▶ **Giving employees money to pay for medical insurance coverage purchased in the individual market, or on an exchange is a form of EPP known as a Premium Reimbursement Arrangement, which is a GHP and which violates the ACA market reforms**
  - ▶ **Excise tax penalties under Code section 4980D are \$100 per affected individual per day for failure to comply with the ACA market reforms. (\$36,500 for the year per employee)**

# Transition Relief of Limited Duration and Scope

---



- ◆ **In Notice 2015-17, IRS offers transition relief if the EPP arrangement is:**
  - ▶ **Sponsored by an employer that is not an ALE subject to the ACA's employer mandate**
  - ▶ **A Medicare premium reimbursement arrangement**
  - ▶ **A healthcare arrangement sponsored by an S-corporation for 2% or greater shareholders-employees**
  - ▶ **A Tricare related health reimbursement arrangement**

# Temporary Relief for Certain Small Employers with EPPs

---



- ◆ **Temporary relief for employers that are NOT an ALE, but still have an EPP reimbursing individual market policies, until June 30, 2015**
  - ▶ **For all of 2014 for small employers that were not ALEs in 2014 (based on 2013 employee averages)**
  - ▶ **From January 1, 2015 to June 30, 2015 for employers that were not ALEs in 2015 (based on 2014 employee averages)**
  
- ◆ **Temporary relief = No \$100/day/employee penalty through 6/30/15**

# Reimbursements Related to Medicare

- ◆ **IRS says an EPP cannot be integrated with Medicare because Medicare is not a GHP and fails to comply with ACA market reforms**
- ◆ **Notice 2015-17: certain EPPs that reimburse Medicare Part B and/or D premiums will be considered integrated with a GHP IF:**
  - ▶ **Employer offers GHP that provides MV**
  - ▶ **Employee participating in EPP is actually enrolled in Medicare**
  - ▶ **The EPP is available ONLY to those enrolled in Medicare**
  - ▶ **The EPP limits reimbursement to Part B and/or D premiums and excepted benefits, including Medigap premiums**
- ◆ **Due to Medicare Secondary Payer rules, only available to employers with less than 20 employees**



# Cash Gross-Ups and Post-Tax Payment Plans

---



- ◆ **Increasing taxable pay to assist with the cost of health insurance is OK but ONLY IF the employee may use the pay increase for any purpose – no restrictions permitted**
- ◆ **Including premium reimbursements in employee income – essentially making the benefit taxable -- still results in an EPP subject to the ACA market reforms and \$100/day penalty for violations**



---

# The Massachusetts Paid Sick Day Initiative, Ballot Question 4

# The Massachusetts Paid Sick Day Initiative, Ballot Question 4

---

- ◆ Was on the November 4, 2014 ballot as an initiated state statute
- ◆ Voters approved Question 4 by a margin of 59% to 41%, which became law
- ◆ The initiative was written as a pre-packaged statute and has been placed in Chapter 149 of the MA General Laws, as new section 148C
- ◆ Massachusetts is the third state to enact some kind of earned sick time





# Don't Be Misled

---



***... By the focus on “Paid Sick Days” or the 11 or more employee trigger point used in many summaries of this law***

***This new law applies to ALL employers with employees in Massachusetts, regardless of employer size***

# In a Nutshell

## NEW MA Earned Sick Time (MESTL) Law

---

- ◆ **Effective July 1, 2015**
- ◆ **Employers with at least 11 employees must allow all employees to earn/accrue and use up to a maximum of 40 hours of paid sick time per calendar year**
- ◆ **Employers with less than 11 employees must allow the same amount of sick time to be earned/accrued, but it can be provided on an UNPAID basis**
- ◆ **Employers must post a prepared notice in every location where affected employees work and provide a copy of the notice to employees**



# Employer and Employee Defined



- ◆ **Employee = any employee working in MA for compensation, regardless**
  - ▶ **Of the period of service**
  - ▶ **Of whether classified as full-time, part-time or temporary**
  - ▶ **If an exempt or non-exempt employee**
  
- ◆ **Employer = any public or private employer**
  - ▶ **That has paid employees in MA**
  - ▶ **Excluding the federal government**
  - ▶ **Excluding MA cities and towns, UNLESS they adopt the law**

# Earned Sick Time Can be Used for the Following

---



- ◆ To care for the physical or mental illness, injury or medical condition (including preventive medical care) of the *employee* or the *employee's child, spouse, parent or parent of a spouse*
- ◆ To attend routine medical appointments for the *employee* or for the *family members* listed above, or
- ◆ To address the psychological, physical or legal effects of domestic violence on the *employee* or the *employee's dependent child*
  - ▶ *“Child” = a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person who has assumed the responsibilities of parenthood*
  - ▶ *“Parent” = a biological, adoptive, foster or step-parent, including an “other person who assumed the responsibilities of parenthood when the employee or employee's spouse was a child”*

# Accrual of Earned Sick Time



- ◆ **Employees earn sick time at the rate of 1 hour of sick time for every 30 hours worked, up to an annual maximum of 40 hours per calendar year**
- ◆ **Accruals and use of sick time must follow the smallest time increment used by the payroll system**
- ◆ **Earned sick time begins to accrue immediately for those employed on the July 1, 2015 effective date**
- ◆ **For those hired after July 1, 2015, earned sick time begins to accrue upon date of hire**
- ◆ **Exempt employees are assumed to work 40 hours per week, UNLESS the normal work week is less than 40 hours – then accruals will be measured based on the exempt employee’s normal work week**

# Accrual of Earned Sick Time



- ◆ **Employers are permitted to allow workers to accrue earned sick time at a faster rate than one hour of sick time per 30 hours of work required by MESTL**
- ◆ **Although sick time accrual begins immediately, accrued sick time may not be used during the first 90 days of employment**
  - ▶ **unless the employer chooses a shorter waiting period or no waiting period**



# Use of Earned Sick Time

---

- ◆ **Employees may carry over to the following calendar year up to 40 hours of unused accrued sick time**
- ◆ **However, employees may not use more than 40 hours of accrued sick time in any calendar year**
- ◆ **Paid sick time is paid at the same hourly rate that applies at the time the paid sick time is taken**

# No Make Up or Replacement Required When Using Earned Time



- ◆ Employee cannot be required to find a replacement worker to cover the hours the employee is absent due to earned sick time
- ◆ Employee cannot be required to work additional hours in order to make up the time absent due to using earned sick time
- ◆ However, instead of using earned sick time accrued, the employer and employee may mutually agree for the employee to work an equivalent number of hours or shifts during the same pay period, or the next pay period, to replace the hours or shifts the employee did not work due to absence from work
  - ▶ Missed hours/shifts are not counted as use of sick time
  - ▶ Employer not required to pay employee for missed hours/shifts
  - ▶ If non-exempt employee works > 40 hours in a week while making up missed/hours/shifts, then employee is still entitled to overtime



# Notice and Required Documentation

---



- ◆ If the need for sick time off is foreseeable, the employee must make a “good faith effort” to notify the employer beforehand
- ◆ The employer has the right to request a doctor’s note or other certification from the employee if the employee uses earned sick time for more than 24 consecutive scheduled work hours
  - ▶ Medical info/diagnosis may not be required
- ◆ Time off or pay cannot be delayed by the employer while it waits for documentation



# No Employer Retaliation

---

- ◆ **Employers may not take adverse action against employees**
  - ▶ for using sick time or
  - ▶ supporting other's rights to use sick time
- ◆ **Adverse action would include**
  - ▶ negative employment evaluation
  - ▶ demotion
  - ▶ disciplinary action or termination
  - ▶ any other form of discipline for the use of earned sick time



# Violations of the New Law

---

- ◆ **Employees (including former employees) may sue the employer under the law. Remedies include:**
  - ▶ **Recovery of lost wages and benefits**
  - ▶ **Injunctive relief**
  - ▶ **Mandatory treble damages, attorneys fees and costs**
  
- ◆ **The MA Attorney general has enforcement authority and may seek injunctive and equitable relief**



# Open Issues

---

**Hopefully, AG guidance will clarify open issues not specifically addressed in the new law, such as:**

- ◆ **Specify how to determine whether an employer has 11 or more employees or the time period to be used to make such a determination**
- ◆ **When employees hired before July 1, 2015 (the effective date of the law) can begin using earned time – will the 90 day waiting period apply or not?**
- ◆ **How to treat earned sick time in situations involving overtime, holiday pay and work on Sundays.**
- ◆ **How the law affects employers not based in MA, but that have MA employees, and other similar scenarios**

# More to Come From the MA Attorney General

---



**MA AG has enforcement authority and violations of MESTL are considered violations of the MA Wage Act. In addition:**

- ◆ **The AG is required to prepare a notice describing the law**
  - ▶ employers will be required to post the notice in a conspicuous place
  - ▶ provide employees with a copy of the notice
- ◆ **The AG is required to issue regulations addressing employer obligations to make, keep and preserve records related to the administration of the earned time law.**
- ◆ **Finally, the AG may adopt rules and regulations to administer the earned time law, including the manner and method of determining employer size**

# Contents of AG Prepared Notice

---

- ◆ **Information describing the rights to earned sick time under the law**
- ◆ **Information about notices, documentation and any other requirements placed on employees in order to exercise their rights to earned sick time**
- ◆ **Information that describes the protections that an employee has in exercising rights under this section**
- ◆ **The name, address, phone number, and website of the attorney general's office where questions about the rights and responsibilities under this section can be answered, and**
- ◆ **Information about filing an action under the law**



# Sick Leave Generally Different From Vacation Time in MA

---

- ◆ In MA vacation time is considered as earned wages that must be cashed out upon termination of employment
- ◆ Accrued sick time under MESTL is NOT required to be cashed out upon termination of employment
- ◆ Employers with vacation/PTO policies that exceed the MESTL standards are not required to provide additional sick time under the MESTL
- ◆ **HOWEVER** the MA AG treats paid time off (PTO) that can be used for any purpose as vacation that must be cashed out upon termination
- ◆ **THEREFORE** an employer that expands its current PTO to cover, for example, part-time or temporary employees will need to cash out accrued time upon termination of such employees



# Coordination With Existing Sick Leave or PTO Policies



- ◆ **MESTL requires minimum sick leave standards but is not intended to discourage more generous employer policies**
- ◆ **Nonetheless, employers with more generous policies may still need to revise their current policies to comply with all MESTL standards. For example,**
  - ▶ **ALL employees must earn sick time**
  - ▶ **Must permit use of sick time for parents of employee**
  - ▶ **Accrual rate must equal or exceed that of MESTL**
  - ▶ **Any current restrictions must not violate new MESTL standards**
- ◆ **If employer intends to satisfy MESTL with its current policy, must ensure that employees who exhaust paid leave rights prior to 7/1/15 still accrue sick time under MESTL beginning 7/1/15**





# Employer Action Plan

---

- ◆ **Be on the lookout for further AG guidance and the employee notice**
- ◆ **Employers without a sick time policy should develop a compliant policy**
- ◆ **Employers with current sick time policies must review and revise them to comply**
- ◆ **Post the required notice in the workplace and distribute the employee notice as required**
- ◆ **Provide necessary training to HR personnel and managers on the new requirements**

# Questions and Answers

---



**Richard A. Szczebak, Esq.**

617.399.0441 | [rszczebak@parkerbrown.com](mailto:rszczebak@parkerbrown.com)