

Released IRS Guidance Regarding New Form W-2 Reporting Requirements for Employer-Sponsored Group Health Coverage

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Background

- » The Patient Protection and Affordable Care Act (PPACA) amends the Internal Revenue Code (IRC) to require Form W-2 reporting of group health plan coverage
 - For information purposes only; no increase in tax liability
- » Originally effective for 2011, but IRS provided transition relief allowing for voluntary compliance for 2011
 - See Notice 2010-69
- » IRS issued Notice 2011-28 on March 29, 2011, which provides guidance for employers and issuers regarding how to value and report coverage
 - Includes special transition relief for certain small employers

Overview of Today's Discussion

- » Informational nature of reporting requirement
- » Effective date
- » Special transition relief for small employers
- » Employers subject to the new rules
- » Plans that must be reported
- » Determination of the aggregate cost
- » Open issues

Informational Nature of Reporting Requirement

- » Notice 2011-28 makes clear the new reporting requirement to employees “is for their information only . . . and does not cause [such coverage] to become taxable”



The stated purpose of the reporting is, “to provide useful and comparable consumer information to employees on the cost of their health care coverage”



Informational Nature of Reporting Requirement (Cont'd)

» When reporting, use “code DD” in Box 12 of the Form W-2

22222 Void **a Employee's social security number** **For Official Use Only** ▶
OMB No. 1545-0008

b Employer identification number (EIN)

c Employer's name, address, and ZIP code

d Control number

e Employee's first name and initial Last name Suff.

f Employee's address and ZIP code

1 Wages, tips, other compensation **2** Federal income tax withheld

3 Social security wages **4** Social security tax withheld

5 Medicare wages and tips **6** Medicare tax withheld

7 Social security tips **8** Allocated tips

9 **10** Dependent care benefits

11 Nonqualified plans **12a** See instructions for box 12

13 Statutory employee Retirement plan Third-party sick pay **12b**

14 Other **12c**

12d

15 State Employer's state ID number **16** State wages, tips, etc. **17** State income tax **18** Local wages, tips, etc. **19** Local income tax **20** Local

Form W-2 Wage and Tax Statement 2012 Department of the Treasury—Internal Revenue Service
Copy A For Social Security Administration — Send this entire page with Form W-3 to the Social Security Administration; photocopies are **not** acceptable. **For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.** Cat. No. 10134D

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Insert
“DD”

Insert “aggregate cost” for all subject plans

Effective Date

- » Requires Form W-2 reporting of “aggregate cost” of all “applicable employer-sponsored coverage”
- » Optional for 2011
- » Mandatory for 2012
 - Transition rule for small employers
 - Also, exception for requests for Forms W-2 upon mid-year terminations

 Therefore, mandatory beginning for Forms W-2 issued in January 2013

Special Transition Rule for Small Employers

- » Employers filing fewer than 250 Forms W-2 for the preceding calendar year are not subject to the reporting requirement
 - Applies across the employer's controlled group
 - Look to all Forms W-2 with respect to the calendar year regardless of when issued (e.g., in January of the next year)

What Employers Are Subject to the New Rule?

- » Applies generally to all employers that provide “applicable employer-sponsored coverage”
 - This includes, among others:
 - All private sector employers
 - Federal, state and local government entities
 - But see discussion below regarding excepted plans
 - Churches and other religious organizations
 - Employers that are not subject to federal COBRA
- » Doesn't apply to transition-eligible small employers and Indian tribal governments

What Plans Are Subject to Reporting?

» Applies generally to all “applicable employer-sponsored coverage”

IN



- ✓ Group health plans , including:
 - Major medical
 - “Mini-med”
 - On-site medical clinics
 - Medicare supplemental
 - Medicare Advantage
 - Employer flex credits into an IRC § 125 health flexible spending arrangement (HFSA)

OUT



- ✓ “Non-integrated” dental and vision
- ✓ Long-term care
- ✓ Amounts salary reduced into HFSA
- ✓ Health Savings Accounts (HSAs)
- ✓ Health Reimbursement Arrangements (HRAs)
- ✓ Accident, disability and AD&D
- ✓ Workers’ compensation and similar coverage
- ✓ Automobile medical payment
- ✓ Government-provided military coverage
- ✓ Employer contributions to multiemployer plans
- ✓ If HIPAA-excepted and paid on after-tax basis:
 - Hospital or fixed indemnity insurance
 - Specified disease or illness insurance

What Plans Are Subject to Reporting? (Cont'd)

» Considerations:

- Threshold matter – needs to be a “group health plan”
 - Likely an issue for the following:
 - Wellness programs
 - Employee assistance programs (EAPs)
 - On-site medical (such as flu shots)
 - Other?
- Medical Savings Accounts
 - Guidance is more generous than statute in excepting accounts
 - BUT, remember that employer flex credits to an HFSA get reported whether expressed as a fixed amount or matching contribution

What Plans Are Subject to Reporting? (Cont'd)

» Considerations:

- Stand-alone dental and vision
 - Statute references coverage under a “separate policy, certificate, or contract of insurance”
 - Notice seems to encompass self-insured
 - Notice refers to “non-integrated” coverage
 - Does that mean pick up the HIPAA definition?

What Gets Reported?

- » Must report the “aggregate cost”
- » Applies to coverage paid with pre-tax and post-tax dollars
 - Thus, coverage counts whether paid by employer in the form of a premium subsidy, by employee on a pre-tax basis through an IRC § 125 cafeteria plan, or by an employee on an after-tax basis
- » Generally use COBRA rates to determine “aggregate cost”

What Gets Reported? (Cont'd)

» Provides several different methods



DEFAULT - "COBRA Applicable Premium Method"

- Reportable cost is applicable COBRA premium
- Regulators indicate COBRA regulations are under review and subject to future revision

Example: Employee is employed with Employer from January 1, 2012 through December 31, 2012. During that time, Employee is enrolled in Employer's major medical coverage. The applicable COBRA premium charged by Employer for such coverage during 2012 is \$500 per month. The aggregate cost of coverage that should be reported on Employee's 2012 Form W-2 is \$6,000 (*i.e.*, 12 x the applicable COBRA premium of \$500).

What Gets Reported? (Cont'd)

» Provides several different methods



IF FULLY INSURED - “Premium Charged Method”

- If the coverage is fully insured, an employer may use total premium as reportable cost

What Gets Reported? (Cont'd)

» Provides several different methods



IF EMPLOYER SUBSIDIZES COBRA COVERAGE - “Modified COBRA Premium Method”

- Where an employer subsidizes some portion of COBRA coverage, employer may use good faith estimate of applicable COBRA premium

Example: Employee is employed with Employer from January 1, 2012 through December 31, 2012. During that time, Employee is enrolled in Employer’s self-insured major medical coverage. Employer subsidizes COBRA and only charges employees \$300 per month; however, Employer’s good faith estimation is that the applicable COBRA premium charged would be \$500 per month absent the subsidy. The aggregate cost of coverage that should be reported on Employee’s 2012 Form W-2 is \$6,000 (*i.e.*, 12 x the applicable COBRA premium of \$500).

What Gets Reported? (Cont'd)

» Can I include in “aggregate cost” any continuation coverage?

➡ Yes, so long as do so on a consistent basis for the entire period

Example: Employee is enrolled in active coverage for the first four months of the 2012 calendar year at a rate of \$400 before experiencing a loss of employment and qualifying event. She then purchases continuation coverage pursuant to applicable law at the same rate of \$400 for the remaining eight months of 2012. Employer can determine the aggregate cost to be either \$1,600 (*i.e.*, \$400 x four months of active employee coverage) or \$4,800 (*i.e.*, \$400 x 12 months of coverage, including continuation coverage).

What Gets Reported? (Cont'd)

» What if cost of coverage changes during the year?

➡ Must take into account changes in cost of coverage

Employer determines that the monthly reportable cost under a group health plan for self-only coverage for the period October 1, 2011 through September 30, 2012 is \$500, and that the monthly reportable cost under a group health plan for self-only coverage for the period October 1, 2012 through September 30, 2013 is \$520. Employee is employed by Employer for the entire calendar year 2012 and had self-only coverage under the group health plan for the entire year. For purposes of reporting for the 2012 calendar year, Employer must treat the 2012 reportable cost under the plan for Employee as \$6,060 (*i.e.*, $(\$500 \times 9) + (\$520 \times 3)$).

What Gets Reported? (Cont'd)

» What if employee commences, changes, or terminates coverage mid-year?

➡ Must take into account changes in cost of coverage by employee action as well

Example: Employer determines that the monthly reportable cost under a group health plan for self-only coverage for the calendar year 2012 is \$500, and that the monthly reportable cost under the same group health plan for self-plus-spouse coverage for the calendar year 2012 is \$1,000. Employee is employed by Employer for the entire calendar year 2012. Employee had self-only coverage under the group health plan from January 1, 2012 through June 30, 2012, and then had self-plus-spouse coverage from July 1, 2012 through December 31, 2012. For purposes of reporting for the 2012 calendar year, Employer must treat the 2012 reportable cost under the plan for Employee as \$9,000 (*i.e.*, $(\$500 \times 6) + (\$1,000 \times 6)$).

What Gets Reported? (Cont'd)

» What if the employer charges a composite or blended rate?

- Composite: A single coverage class is provided under the plan (i.e., if an employee elects coverage, all individuals eligible for coverage under the plan because of their relationship to the employee are included in the elections and no greater amount is charged to the employee regardless of number of covered individuals)
 - ➡ Employer may use the same reportable cost for a period for the single class of coverage under the plan
- Blended: A single premium is charged for different types of coverage under a single plan (e.g., self-only and family coverage, or self-plus-one and family coverage, but one premium regardless of coverage level)
 - ➡ Employer may use the same reportable cost for a period for all the different types of coverage under the plan for which the same premium is charged to employees

Comments Requested

» By June 27, 2011

» Regarding:

- All aspects of the interim guidance
- Specific comments are also requested regarding:
 - How future guidance could help reduce compliance burdens of reporting requirements while still providing useful information
 - Challenges for employers in implementing the new rule, and how further guidance could address those challenges, including through the provision of additional transition relief
 - Issues that may arise in applying the reporting requirements to (i) employers contributing to multiemployer plans, (ii) employers that filed fewer than 250 Forms W-2 for the previous calendar year, (iii) employers that sponsor a self-insured plan that is not subject to any federal COBRA (such as governmental and church employers)

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