American Benefits Council
Preparing for PPACA Webinar
Form W-2 Guidance

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May 26, 2011
What We'll Cover

- Definition of Group Health Plan
- COBRA calculation methodology: issues for self-insured employers
- Key Compliance Issues for Employers
New Code § 6051(a)(14)

- Requires reporting of “aggregate cost” of “applicable employer-sponsored coverage” on Form W-2
  - "Applicable Employer-Sponsored Coverage" defined in new Code § 4980I (excise tax for high cost health plans)
  - Aggregate cost is to be determined under rules similar to the rules of Code § 4980B(f)(4), referring to the definition of “applicable premium” for purposes of COBRA coverage
Definition: Applicable Employer-Sponsored Coverage

- Broadly defined as coverage under any group health plan that is or, if paid by employer, would be excludable from income under Code § 106
- Group Health Plan: Any plan (whether insured or self-insured) of, or contributed to by, an employer to provide health care
  - May rely on good faith interpretation of statutory provisions and applicable guidance, including definition in IRS COBRA regulations
Exceptions: Applicable Employer Sponsored Coverage

- Long-term care coverage
- Accident and disability coverage
- Certain stand-alone vision or dental coverage not "integrated" with medical coverage
- Specified disease, hospital indemnity and other fixed indemnity coverage when paid on an after-tax basis
- HSA, MSA, (for now) HRA, and, in most circumstances, health FSA
Examples: Applicable Employer Sponsored Coverage

- On-site medical clinics
- Wellness programs
  - Such as cholesterol screenings, physical examinations
- Employee Assistance Programs
  - If they provide any medical care, such as trained counselors who provide some form of counseling
- Executive medical reimbursement plans
  - Often unfunded, self-insured plans to provide unlimited coverage for medical expenses of top executives and their dependents
Aggregate Reportable Cost

- Both employer and employee portions of cost included
- Does not matter whether employee paid through pre-tax or after-tax contributions
  - No adjustment for imputed income amounts
Calculating the Cost of Coverage

- Aggregate cost to be determined under “rules similar to COBRA”
  - IRS Notice 2011-28 provides *three* permissible methods
    - COBRA applicable premium method,
    - Premium charged method (for insured plans), or
    - Modified COBRA premium method
- Notice did not resolve how to calculate COBRA premiums for self-funded plans
Applicable Premium for Self-Insured Plans

- Unlike insured plans, self-insured plans cannot simply rely on insurance premiums charged.
- Existing COBRA rules govern calculation, generally under one of two methods:
  - Actuarial method
    - Requires information on prior claims, derivation of trend factor, information about stop-loss cost, and creation of tiers; actuaries may differ.
  - Past cost method
    - Applies only if no significant change in coverage offered or in number of employees covered under plan from past year; prior amount is adjusted by percentage increase (or decrease).
Key Compliance Issues

- Identifying & valuing reportable coverage
- Tracking employee terminations and coverage changes during plan year
- Additional challenge for mergers/acquisitions
- Complicated rule relating to FSAs
- Mistakes happen- when is correction necessary?
- Expiration of transition relief
AMERICAN BENEFITS COUNCIL
PREPARING FOR PPACA

FORM W-2 GUIDANCE

SETH PERRETTA

MAY 26, 2011
New Form W-2 Reporting Requirement

- How do the new reporting requirements relate to the high-cost “Cadillac” plan excise tax under PPACA?
  - Applicable employers
  - Reportable coverage
  - Issue of using COBRA valuation as a taxing mechanism
High-Cost “Cadillac” Plan Excise Tax

Effective 2018, PPACA imposes a new 40% excise tax on value of employer-provided coverage exceeding certain dollar thresholds (with increased thresholds available to select groups)

- Generally applies to all health coverage provided and/or sponsored by an employer regardless of whether paid by employer, through pre-tax salary reduction by employee, or by employee on after-tax basis
- If value exceeds thresholds, then must be reported to responsible parties for payment of excise tax liability
  - Responsible parties (i.e., plan administrators and/or insurers) must then pay a 40% excise tax on their share of excess
- The tax is NOT deductible for federal income tax purposes

Is Form W-2 Reporting the first step to implementing the excise tax?

- How are the two regimes the same and different?
- Is COBRA valuation suitable as a taxing regime?
### Form W-2 Reporting v. “Cadillac” Plan Excise Tax

#### Which Employers Are Subject to the Rule?

<table>
<thead>
<tr>
<th>Form W-2 Reporting</th>
<th>“Cadillac” Plan Excise Tax</th>
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</thead>
<tbody>
<tr>
<td>Applies generally to all employers that provide “applicable employer-sponsored coverage”</td>
<td>Applies at the level of the issuer or plan administrator if self-insured</td>
</tr>
<tr>
<td>✓ All private sector employers</td>
<td>✓ Practically, employers and/or employees will bear the cost (via increased premiums)</td>
</tr>
<tr>
<td>✓ Federal, state and local government entities</td>
<td>• Generally same employers will be subject to excise tax as are subject to the new reporting requirement</td>
</tr>
<tr>
<td>✓ Churches and other religious organizations</td>
<td>• Interesting issues regarding taxation of state entities</td>
</tr>
<tr>
<td>✓ Employers that are not subject to federal COBRA</td>
<td></td>
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<tr>
<td><strong>Does not apply to transition-eligible small employers and Indian tribal governments</strong></td>
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</tbody>
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But see next slide regarding excepted plans
New Form W-2 Reporting Requirement

» Which Plans Are Subject to Reporting?
  - Applies generally to all “applicable employer-sponsored coverage”

IN
- Group health plans
  - 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 HFSAs
- Health Savings Accounts (HSAs)
- Health Reimbursement Arrangements (HRAs)
- Accident, disability and AD&D
- Workers’ compensation and similar coverage
- Automobile medical payment
- Self-insured governmental and church plans
- 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

= Expanded per rulemaking
**Form W-2 Reporting v. “Cadillac” Plan Excise Tax**

**Which Plans Are Subject to Reporting for Purposes of the Excise Tax?**
- Applies generally to all “applicable employer-sponsored coverage”

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| ✓ Group health plans  
  • Major medical  
  • “Mini-med”  
  • On-site medical clinics  
  • Medicare supplemental  
  • Medicare Advantage  
  • Employer flex credits into an—IRC § 125 health flexible spending arrangement (HFSA)  
  • Health Savings Accounts (HSAs) to the extent of any employer contributions (including amounts contributed by an employee through a cafeteria plan)  
  • Health Reimbursement Arrangement (HRA) | ✓ “Non-integrated” dental and vision “under a “separate policy or contract of insurance”  
✓ Long-term care  
✓ Amounts salary reduced into HFSAs  
✓ Health Savings Accounts (HSAs) to the extent of after-tax contributions (although may be deductible on Form 1040)  
✓ Health Reimbursement Arrangements (HRAs)  
✓ Accident, disability and AD&D  
✓ Workers’ compensation and similar coverage  
✓ Automobile medical payment  
✓ Self-insured governmental and church plans  
✓ 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 |

= Changes to conform to excise tax application per the statute
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