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American Benefits Council
P4P

Form W-2 Guidance and Essential Benefits Requirements

(Note: This slide deck only addresses the 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- IRS Notice 2011-28 was superseded by Notice 2012-9
  - Notice 2012-9 restates and amends guidance for employers and issuers regarding how to value and report coverage
  - IRS will continue to consider comments submitted regarding Notice 2011-28

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

» The guidance 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)
1 Wages, tips, other compensation
2 Federal income tax withheld
c Employer's name, address, and ZIP code
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
d Control number
9
10 Dependent care benefits
e Employee's first name and initial Last name Suff.
11 Nonqualified plans
12a See instructions for box 12
13 Statutory employee Retirement plan Third-party sick pay
12b
14 Other
12c
12d
f Employee's address and ZIP code
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 Loca

Draft as of 05/02/2011

Form **W-2** Wage and Tax Statement 2012

Department of the Treasury—Internal Revenue

For Privacy Act and Paperwork Re... Act Notice, see the separate instru...

Copy A For Social Security Administration — Send this entire page with Form W-3 to the Social Security Administration; photocopies are not acceptable.

Cat. No. 10134D

Do Not Cut, Fold, or Staple Forms on This Page

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
  - – Exception for mid-year requests for Forms W-2
  - ⇨ Therefore, mandatory beginning for Forms W-2 issued in January 2013

What Employers Are Subject to the New Rule?

» Generally applies to all employers that provide "applicable employer-sponsored coverage"
  - This includes, among others:
    - All private sector employers
    - Federal, state and local government entities
    - Churches and other religious organizations
      - But not with respect to self-funded arrangements
  - This does not include:
    - Indian tribal governments or related corporations
    - Transition-eligible small employers (see next slide)

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

– Does **not** apply across the employer's controlled group

– When measuring 250: Look to all Forms W-2 issued with respect to the calendar year regardless of when issued (*e.g.*, includes those issued in January of the next year)

– Expiration? The exception for small employers continues to be available unless and until further guidance is issued

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)
- ✓ Likely “in” (at least a portion thereof):
  - EAPs *
  - Wellness programs *

* Consider whether “incidental” medical or bundled with major medical

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
- ✓ Government-provided military coverage
- ✓ Employer contributions to multiemployer plans
- ✓ If HIPAA-excepted <u>and paid on after-tax basis</u>:
  - Hospital or fixed indemnity insurance
  - Specified disease or illness insurance
- ✓ Coverage provided by governments primarily for military and their families

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

» Must be "applicable employer-sponsored coverage"

- Defined by reference to IRC section 5000(b)(1) group health plan
  - "[A] plan (including a self-insured plan) of, or contributed to by, an employer . . . or employee organization to provide health care (directly or otherwise) to the employees, former employees, . . ."
- Same statutory definition that controls for COBRA
  - Notice states that plan sponsors "must operate in good faith compliance with a reasonable interpretation of the statutory requirements of Code section 4980B"
    - Does this apply to determinations regarding group health plan status?

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

» Is it a "split" program?

– Notice 2012-9 addresses "split" programs

- Where medical benefits are "incidental" to non-medical benefits, no reporting required
  - – But, what is "incidental"? More than "de minimis"?
- Where non-medical benefits are "incidental" to medical benefits, the non-medical portion may be reported
- Implications beyond the Form W-2 reporting requirement?
- Example: LTD with medical benefit rider

Incidental?

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

» Considerations for EAPs, wellness and on-site medical:

- Coverage is only required to be reported to the extent it is applicable employer-sponsored coverage, i.e., a group health plan
  - Note: The Notice provides little meaningful assistance in determining what is applicable employer-sponsored coverage
- If "split" program and some component thereof provides group health plan coverage, is it "incidental" and can it be disregarded?
- If not incidental, is separate reporting required?
  - If a separate premium is not charged to COBRA beneficiaries for coverage under EAPs, wellness programs, or on-site medical clinics, then not subject to new reporting requirement
  - If a separate premium is charged, then must separately report
  - Note: The Notice does not address where COBRA coverage is not provided for EAPs, wellness programs, or on-site medical clinics; negative implication is that they are subject to COBRA

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

» Additional Considerations:

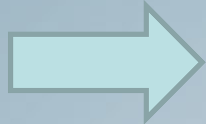
- Excess reimbursements to HCIs under IRC § 105(h)
- Certain payments / reimbursements to 2% shareholder-employee of S-corp
- Amounts reported on Form W-2 furnished by a third-party sick pay provider

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



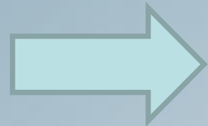
DEFAULT - "COBRA Applicable Premium Method"

- 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

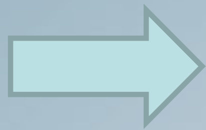


IF FULLY INSURED - "Premium Charged Method"

- 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 x 9) + ($520 x 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 x 6) + ($1,000 x 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

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