

# Health Care Reform Management Alert Series

Issue 19

## W-2 Reporting of the Cost of Health Care Coverage

This is the nineteenth issue in our series of alerts for employers on selected topics in health care reform. (Click [here](#) to access our general summary of health care reform and other issues in this series) This series of Health Care Reform Management Alerts is designed to provide an in-depth analysis of certain aspects of health care reform and how it will impact your employer-sponsored plans.

Under the Patient Protection and Affordable Care Act (PPACA), employers will be required to include the cost of employer-sponsored health care coverage on the Forms W-2 they issue to employees. This reporting requirement was originally effective for the 2011 tax year. In October, 2010, however, the Internal Revenue Service (IRS) issued Notice 2010-69 which provided that reporting would be optional for 2011, but required for 2012 (W-2s issued in January 2013). Notice 2011-28 provides interim guidance on the W-2 informational reporting requirement. This Alert addresses this guidance.

### New Form W-2 Reporting Requirement

PPACA requires that an employer report the aggregate cost of employer-sponsored health coverage on the Form W-2 for its employees. This information must be reported in Box 12 of the Form W-2 using Code DD. Forms W-2 generally must be provided by January 31 of the following year or, if the employee terminates employment during the year, within 30 days of a written request.

The IRS guidance confirms that this reporting is informational only and does not cause this coverage to be taxable. The IRS notes that several of the provisions reflected in the guidance are transitional and intended to facilitate compliance with this new requirement (such as the small employer exception discussed below). The guidance also provides that any future guidance will be prospective and will not apply to any calendar year beginning within six months of the date the guidance is issued.

### Who Must Comply?

As a general rule, all employers who provide employer-sponsored coverage during the calendar year will need to report the cost of that coverage on Forms W-2 issued to employees. This requirement applies to federal, state and local governmental entities, churches and other religious organizations (but see *What Needs to be Reported* for exclusions that may impact these employers). This new requirement does not apply to Indian tribal governments.

*Special Transition Rule for Small Employers.* Small employers that are required to file fewer than 250 Forms W-2 in the prior year will not be required to report the cost of health coverage provided to employees for that year. For example, if an employer was required to file fewer than 250 Forms W-2 for 2011, it would not be required to include the cost of health coverage on its employees' 2012 Forms W-2. This transition rule will apply until further guidance is issued, and Notice 2011-28 suggests this rule will be in place at least until 2014.

Applies to grandfathered plans

Applies to new health plans and plans that lose grandfathered status

## What Needs to be Reported?

Employers will need to report the aggregate cost of employer-sponsored coverage which generally includes any employer-provided coverage under a group health plan that is excludable from the employee's gross income, with several exceptions. Employer-sponsored coverage would include, for example, coverage under medical plans, mini-med plans, Medicare supplemental coverage, on-site clinics and certain employer-provided flex credits contributed to a health care flexible spending account. Several of the exceptions are listed in the box below.

Notably, Employers do not need to include, however, the total of the aggregate reportable costs attributable to all its employees on the Form W-3, Transmittal of Wage and Tax Statements.

### Coverage That Does *Not* Need to be Reported on the Form W-2:

- Archer MSA or Health Savings Account coverage
- Salary reduction contributions to flexible spending accounts (but note, certain employer contributions may need to be reported)
- Health Reimbursement Arrangement coverage
- Long term care coverage
- Non-integrated dental or vision coverage (i.e., dental/vision offered under a separate insurance contract or dental or vision that employees must elect and pay for separate from medical coverage)
- Accident or disability income insurance
- Supplemental liability insurance
- Workers' compensation insurance
- Automobile medical payment insurance
- Independent, noncoordinated coverage for a specified disease or illness (e.g., cancer insurance)
- Multiemployer plan coverage
- Self-insured coverage that is not subject to federal continuation coverage requirements (such as COBRA, the Public Health Service Act or the Federal Employees Health Benefits Program)

## How is the Cost of Coverage Calculated?

For insured coverage, the premium cost for the coverage is used for the reporting. For self-funded plans, the premium costs are generally calculated in the same way as COBRA rates are calculated, using a good faith interpretation of the COBRA requirements.

The amount to be reported on the Form W-2 should include both employer and employee contributions for the coverage. Both employee pre-tax and after-tax contributions are included for these purposes as well. The full cost of coverage is reportable on the Form W-2 even if some of the coverage is considered taxable to the employee (e.g., if the employee covers someone who does not meet the definition of dependent for federal tax purposes).

The cost of the coverage reported on the Form W-2 for any employee must take into account any changes in coverage during the year (e.g., when an employee begins coverage mid-year or changes the level of coverage during the year). As a result, employers will need to be tracking the coverage provided throughout the year to be able to more easily determine this reportable amount.

#### *Special Rules Apply for the Period After Employment Terminates*

The guidance provides employers flexibility in deciding whether or not to include the cost of coverage provided after termination on the Form W-2. Employers are required to use a reasonable method of reporting the cost of coverage and to be consistent in how they treat this coverage for these purposes. For example, an employer may opt to only report the cost of health coverage the individual received while an active employee, and not include the cost of COBRA coverage. Another reasonable method would be to include the cost of COBRA coverage. The guidance only requires the employer to act consistently in its reporting.

If the employee who terminates employment mid-year requests a Form W-2 before the end of the year, the current guidance provides an employer is not required to report *any* cost of health coverage on that Form W-2. The guidance does indicate, however, that this is transitional relief so the reporting requirement related to these employees may change going forward.

Please note, if an employer is not required to issue a Form W-2 to an individual, the employer is not required to report the cost of health coverage for that individual. This means an employer is not required to include the cost of coverage on a Form W-2 for a retiree who would not otherwise be entitled to receive a Form W-2.

#### **Employer Action Steps**

- Determine what employer-sponsored health care coverage must be reported on employees' Forms W-2.
- Ensure systems are in place to track coverage elected by employee and mid-year changes to simplify the administration of this reporting requirement at year end.
- Decide how to report the cost of coverage for the year an employee terminates employment (e.g., will the cost of COBRA coverage elected be included or not?).
- Coordinate with payroll staff or vendor to ensure proper reporting on the Form W-2.
- Consider implementing a communication strategy to minimize questions from employees about this new entry on their Form W-2 and its informational nature.

*For further details, or if you have any questions regarding the Form W-2 reporting requirements, contact your Seyfarth Shaw LLP attorney or any Employee Benefit attorney listed on the website at [www.seyfarth.com/employeebenefits](http://www.seyfarth.com/employeebenefits), or send your questions to [HealthReform@seyfarth.com](mailto:HealthReform@seyfarth.com).*