



Legal Alert: Health Insurance Information Reporting Further Delayed

4/5/2011

As discussed in our previous Legal Alert, one of the changes made by the Patient Protection and Affordable Care Act (PPACA) concerning employer-sponsored health coverage is that employers would now be required to report the employer-paid costs of that health coverage on employees' Forms W-2. In Notice 2010-69, the IRS delayed this new reporting requirement until the 2012 Forms W-2 (i.e., those that are filed in early 2013), although employers still had the option to report the cost on Forms W-2. See our earlier Alert, "Do Employers Need to Report the Amounts that They Pay for Employees' Health Insurance?" at <http://www.fordharrison.com/shownews.aspx?show=6690>.

IRS has now provided further interim guidance, in Notice 2011-28, which confirms that reporting is still not required until the 2013 filing of the 2012 Forms, whether or not it is voluntarily reported earlier. However, reporting will remain voluntary for certain "small employers" until further guidance is issued, but at least through the filing of the 2012 Forms W-2. IRS also provided some detailed guidance for employers that become subject to the rule, and for those employers that remain exempt but voluntarily choose to comply.

Under the new Notice, "small employers" for a year are those filing fewer than 250 Forms W-2 for the preceding year; those employers won't *have* to report the cost of health care coverage on Forms W-2 that are required to be furnished to employees before January 2014, at the earliest, when W-2s are filed for 2013.

For employers who are required to report on the 2012 Forms W-2, and for employers who voluntarily choose to report on either 2011 or 2012 forms, detailed guidance is provided on such topics as: general requirements; methods for reporting the cost of coverage; definitions of terms relating to the cost of coverage required to be reported; the types of coverage for which the cost is required to be reported; methods used to determine the cost of coverage; and other issues that may arise in determining the cost of coverage.

For example:

- The IRS again stated that the new reporting requirement is purely **informational only**, and has nothing to do with whether or not the coverage is excludible from employees' income. Providing the information is intended to provide complete information to employees concerning the cost of their health coverage.

- Generally, all employers – including church and governmental employers – that provide employer-sponsored medical coverage during a calendar year are required to report cost information, beginning with the 2012 Forms W-2. (Indian tribal governments are exempt.) However, as noted above, employers that did not file more than 250 Forms W-2 for 2011 are exempt from the reporting requirement on their 2012 Forms W-2. This exemption may continue for later years, depending upon future IRS guidance.
- The "aggregate cost" is reportable in box 12 of Form W-2, using new code "DD." However, an employer is not required to issue a Form W-2 solely to report "aggregate cost" to an employee for whom a Form W-2 is not otherwise required to be filed. The Notice also addresses such issues as reporting post-termination coverage, reporting by multiple related employers, and reporting by successor employers.
- The reportable amount of "aggregate cost" is the total cost under all "applicable employer-sponsored coverage," which is defined as coverage under any "group health plan" made available to the employee that is excludible from income under section 106 of the Internal Revenue Code. A "group health plan" is a plan maintained or contributed to by an employer (or employee organization) in order to provide health care to current and former employees or their families. The "aggregate cost" that must be reported includes portions paid by the employer as well as both pre-tax and after-tax contributions by the employee, and includes costs (if any) that are includible in the employee's income.
- In general, the cost of coverage under all applicable employer-sponsored coverage is included in the "aggregate cost," except for contributions to an Archer MSA or health savings account, and except for salary reduction contributions to a health flexible spending arrangement. "Aggregate cost" also excludes: employer contributions to multiemployer plans; the cost of coverage under a health reimbursement arrangement; the cost of coverage under a separate dental or vision plan; the cost of coverage under a plan maintained primarily for members of the military and their families.
- There are three methods by which an employer may calculate the reportable cost: (i) the COBRA applicable premium can be used; (ii) the premium charged by the plan's insurer may be used; or (iii) for an employer that subsidizes the cost of COBRA coverage, a good faith estimate of the COBRA applicable premium can be used. An employer doesn't have to use the same method for all of its plans, but must use the same method for all employees covered under a particular plan.

Some other issues are addressed in the Notice, including how mid-year changes in cost should be handled, but additional IRS guidance undoubtedly will be issued before the requirement goes into effect.

If you have any questions about the Notice or about the Act's reporting requirements, please contact the author of this Legal Alert, Jeffrey Ashendorf, at jashendorf@fordharrison.com, any member of Ford & Harrison's Employee Benefits practice group or the Ford & Harrison attorney with whom you usually work.

You may also visit the health care reform section of the Ford & Harrison web site, <http://www.fordharrison.com/HealthcareReform.aspx>, for more helpful resources and tools on health care reform.