

Health Care Reform Update: Guidance Issued on W-2 Reporting of the Cost of Employer-Sponsored Group Health Plan Coverage

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On March 29, the Internal Revenue Service ("IRS") issued Notice 2011-28, providing transition guidance and relief regarding the requirement to report the cost of employer-sponsored group health plan coverage on Form W-2, Wage and Tax Statement ("Form W-2"). The guidance requires most employers to begin reporting the cost of employer-sponsored health care coverage on Forms W-2 for the 2012 calendar year (generally issued in January 2013).

The Patient Protection and Affordable Care Act (the "ACA") requires employers to report the aggregate cost of employer-sponsored health coverage (whether paid by the employer or the employee) on an employee's Form W-2. The Form W-2 reporting requirement is for informational purposes only and is meant to provide employees with useful and comparable consumer information on the cost of their health care coverage. This requirement was slated to go into effect for the 2011 calendar year, but the IRS in Notice 2010-69 made compliance for the 2011 calendar year optional. Notice 2011-28 provides that for most employers the reporting requirement will be mandatory for the 2012 calendar year and also provides useful guidance regarding how to satisfy the requirement.

Some highlights of the guidance provided in Notice 2011-28 are:

- **What Employers are Subject to the Reporting Requirement** - Most employers will be required to comply, including private and government employers. However, until further guidance is issued, relief from the requirement will continue for employers that filed fewer than 250 Forms W-2 in the prior calendar year.
- **How Certain Employee Situations Are Treated** - Special rules are provided regarding application of the reporting requirement for employees terminated mid-year, employees who work for multiple employers or a successor employer and former employees.
- **Types of Coverage Reported** - In general, coverage that is made available by an employer and that is excludable from income under Internal Revenue Code Section 106 must be reported. However, the notice also includes a list of coverage that may be excluded, including coverage under a Health Reimbursement Account and a stand alone dental or vision plan.



- **Method of Calculating the Cost of Coverage** - In general, employers may use actual premiums charged or COBRA rates calculated in good faith manner.
- **Issues in Calculating the Cost of Coverage** - Special rules are provided regarding various issues that may arise in calculating the cost of coverage, including issues associated with a mid-year change in benefits and non-calendar year plans.

Comments on this interim guidance are due by July 17, 2011, and the IRS may issue further guidance. Employers should begin to take action based on the guidance to ensure that proper procedures and structures are in place to satisfy the reporting requirement for the 2012 calendar year.

If you have any questions regarding the Form W-2 employer-sponsored group health plan coverage reporting requirements or any other relevant issues under the ACA , please contact one of the Reed Smith attorneys listed below or your Reed Smith attorney.