

Notice 2011-28: Transition Relief and More on W-2 Reporting of Health Care Costs

March 31, 2011

On March 29, 2011 the IRS released [Notice 2011-28](#) which contains guidance, in question-and-answer format, on W-2 reporting of the cost of health care coverage, a requirement of PPACA. This reporting requirement – often mistaken for a tax on health care costs – was originally required for Form W-2s for 2011 issued to employees and SSA in early 2012. In an earlier Notice the IRS postponed the reporting requirement until 2012 W-2s issued in early 2013. Now, Notice 2011-28 postpones the reporting duty yet another year – and until further guidance issues – for employers that in 2011 issue fewer than 250 Forms W-2 (this is also the threshold for mandatory electronic reporting).

Again – if your company issues fewer than 250 Forms W-2 for 2011 – i.e., the forms that you send to employees and SSA in early 2012 – then in 2012 your company is relieved from tracking and reporting the value of group health care coverage on Forms W-2.

For employers that will have to report the value of health coverage for 2012 Forms W-2 the Notice contains helpful information on a number of points:

1) With regard to reporting the cost of health coverage in a year in which an employee terminates employment, the employer can either report the cost of COBRA coverage for the balance of the months of the year, or report only on months in which the employee actively was employed. The employer must use one or the other reporting method for all terminating employees.

2) If terminated employee requests a copy of his or her Form W-2 before the end of the year, the employer is not required to report any amount in box 12, designated for the cost of coverage.

3) When an employee transitions employment in the course of a year, either the predecessor or successor employer may each report the cost of coverage for the period the employee worked for them, or the successor employer can report the cost for the whole year pursuant to a procedure set forth in [Revenue Procedure 2004-53](#). Employers that undergo a change in control transaction should flag this issue for negotiation along with COBRA duties and related payroll issues.

4) The amount that must be tracked and reported is the “aggregate cost of applicable employer-sponsored coverage.” “Applicable employer-sponsored coverage” means coverage under any group health plan that is excludible from an employee’s gross income under IRC Section 106, with the exception of: (a) coverage for long-term care; (b) coverage for on-site medical clinics; (c) coverage under separate dental or vision insurance (unbundled from group health); or (c) individual hospital indemnity or disease-specific coverage.

5) The aggregate cost of coverage includes the employer and the employee portion, whether or not the employee paid for the coverage on pre-tax basis under a cafeteria plan. The aggregate cost also includes the cost of coverage provided to over-age dependents (older than age 26 – some states mandate coverage past this age) – even when the cost of this coverage is added to employees’ taxable wages.

6) Amounts excluded from the aggregate cost of coverage include (a) contributions to an Archer MSA, (b) contributions to HSAs, and (c) salary reduction elections under a health flexible spending arrangement (“FSA”). When a health FSA is offered under a Section 125 cafeteria plan, the amount the employer must include in the aggregate reportable cost of coverage on Form W-2 is the amount of the employee’s salary reduction for all qualified benefits – not just the health FSA, plus the amount of any employer flex credits or contributions that the employee elects to apply to the health FSA. If the employee’s total salary reduction for all flex benefits equals or exceeds that amount of the health FSA

for a given year, the employer does not include the amount of the health FSA for that employee for that year. Examples in the Notice under Q&A 19 spell this out in more detail.

7) An employer may choose from among several methods of calculating the reportable cost under a plan: (a) using the COBRA premium cost to the employee; (b) using the premiums charged for the employee's coverage; (c) using a modified COBRA premium (where the employer subsidizes COBRA premiums or bases them on premiums calculated in a prior year. In addition, employers using one or more composite rates can use those rates to calculate the cost of coverage for reporting purposes.

8) Employers must track changes to the cost of coverage occurring during the year, for reporting purposes. This will occur when an insured health plan is on a fiscal year renewal cycle or when a self-funded plan uses the COBRA premium method and the 12-month period used to determine the COBRA applicable premium is not the calendar year.

9) Employers must track changes to the cost of coverage occurring when an employee commences, changes, or terminates coverage, for instance when an employee who switches from individual to individual plus spouse coverage in the middle of the year.

10) The reportable cost of coverage must always be determined on a calendar year basis; this will be an issue for employers whose health plans use a fiscal year.

The IRS requests public comments on a number of points including on challenges employers may face in implementing reporting of coverage costs on the 2012 Forms W-2, as well as issues raised by applying the reporting requirement to employers filing fewer than 250 Forms W-2 in a year. This may suggest that the IRS is evaluating a permanent reporting waiver for this group; hopefully this will be addressed in future guidance.

<http://www.irs.gov/pub/irs-drop/n-11-28.pdf>

http://www.irs.gov/irb/2004-34_IRB/ar13.html