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Health Care Reform: Form W-2 Reporting of Employer-Provided Group Health Coverage

Executive Summary

Beginning in 2013, large employers will need to report on Forms W-2 the cost of the group health coverage that they provide to their employees. Small employers issuing fewer than 250 Forms W-2 will be exempt, for now. To prepare for this reporting obligation, employers should begin working with their payroll administrators to make sure that their systems are updated by the end of 2011, so that they can track the cost of any coverage provided in 2012 and report it on the Forms W-2 that will be issued in January 2013.

The Internal Revenue Service recently issued Notice 2011-28, which provides guidance on health care reform's requirement that employers report the cost of group health coverage provided to their employees on Form W-2. As summarized below, this guidance describes when this new requirement will go into effect, what amounts need to be reported, and how those amounts should be calculated. Most importantly, the guidance reiterates that this new reporting requirement does not impact the underlying tax rules: that is, the amounts paid towards health coverage that are otherwise non-taxable remain non-taxable even though reported on the Form W-2.

When Does the Form W-2 Reporting Requirement Go into Effect?

Employers are generally required to begin reporting the cost of group health coverage beginning in January 2013. The information reported in January 2013 will relate to group health coverage provided in 2012. Employers may voluntarily report the cost of group health coverage before January 2013, but are not required to do so.

Notably, this Form W-2 reporting requirement is further delayed until additional guidance is issued for certain employers and with respect to certain types of coverage. Specifically, transitional relief is provided to:

- employers issuing fewer than 250 Forms W-2 in the previous year;
- multiemployer plans;
- health reimbursement arrangements;
- stand-alone dental and vision plans (in other words, dental and vision plans that are not otherwise integrated or incorporated into comprehensive medical plans);
- self-insured plans that are not subject to COBRA or similar Federal requirements; and
- employers furnishing Forms W-2 mid-year to employees who terminate during that year.

The transitional relief will continue at least through the 2012 Forms W-2 that are required to be provided to employees in January 2013, and may extend longer, depending upon when the IRS publishes additional guidance relating to these types of employers and types of coverage.

What Amounts Need to Be Reported?

Under the new Form W-2 reporting rules, all employers (including governmental entities and religious organizations) must report the total cost of "applicable employer-sponsored coverage" provided to each employee. The total cost includes both the portion of the cost paid by the employer and the portion of the cost paid by the employee (whether on a pre-tax or after-tax basis).

For purposes of these reporting requirements, "applicable employer-sponsored coverage" generally means any group health plan made available to the employee by the employer. Under this rule, costs attributable not only to traditional employer-sponsored medical plans, but also to other employer-sponsored plans such as on-site medical clinics and "mini-med" plans, must be reported.

Several forms of coverage, however, are excluded from the Form W-2 reporting requirement, including:

- accident and disability coverage;
- long-term care coverage;

- liability insurance and workers' compensation insurance;
- fully-insured dental and vision plans; and
- specified disease and hospital indemnity plans.

Additionally, all amounts contributed to health savings accounts and employee contributions to health flexible spending accounts do not need to be reported.

How Should the Cost of the Group Health Coverage Be Calculated?

For a fully-insured plan, the premium charged is the cost of coverage. For a self-insured plan, the cost of coverage is the COBRA applicable premium. In calculating this cost, the employer must be sure to comply with the requirements for calculating the COBRA premium provided in the COBRA statute. If the employer subsidizes the cost of COBRA so that the premium charged to qualified beneficiaries is less than the COBRA applicable premium, the employer may determine the reportable cost based upon a reasonable good faith estimate of the COBRA applicable premium, if such reasonable good faith estimate is used as the basis for determining the subsidized COBRA premium.

Will There Be Changes to this Guidance?

The Notice requests comments, and changes are likely. The IRS states, however, that to the extent the future guidance applies the reporting requirements to additional employers or types of coverage or more expansively in any way, the guidance will apply prospectively only.

What Should Employers Do Now to Prepare for this New Reporting Requirement?

The new Form W-2 reporting rules will become effective for most large employers in January 2013. It is not too soon for employers to begin identifying and valuing their group health plans that are subject to reporting. While monitoring the publication of additional guidance, employers should begin work with their payroll departments or payroll administrators to make sure their systems are updated to capture and report the cost of such coverage.

The lawyers in Venable's [Employee Benefits and Executive Compensation](#) group are familiar with these new reporting rules and would be happy to assist you with their implementation or with any other questions you may have regarding the new requirements employers face under health care reform.

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