

Form W-2 Reporting of Employer-Sponsored Group Health Plan Coverage

On January 3, 2012, the IRS updated its guidance on the new health reform Form W-2 reporting requirement for employer-sponsored group health plan coverage. The new guidance appears in Notice 2012-09, and supersedes the W-2 reporting guidance issued last year in Notice 2011-28. This memorandum summarizes Notice 2012-09.

General requirements. According to the IRS, the purpose of the Form W-2 reporting requirement is to provide employees with information on the cost of their health plan coverage. For most employers, the reporting requirement will be effective beginning with the 2012 calendar year (W-2s issued in January 2013). However, small employers (those issuing fewer than 250 W-2s for the preceding calendar year) are not required to comply with the new reporting requirement until further notice. Affected employers are required to report the aggregate cost of applicable employer-sponsored group health plan coverage in Box 12 of Form W-2, using code DD. The reported amount is not taxable – it is provided only for informational purposes.

Affected employers. All employers that provide applicable employer-sponsored group health plan coverage are subject to the new Form W-2 reporting requirement. This includes for-profit, not-for-profit, governmental and church employers. Federally recognized Indian tribal governments are exempt from the reporting requirement. Until further guidance is issued, additional exemptions apply to:

- Tribally-chartered corporations wholly-owned by a Federally recognized Indian tribal government, and
- Employers who were required to file fewer than 250 Form W-2s for the preceding calendar year (this determination is made without regard to whether the employer is using an agent)

Affected employees. Employers that are required to report employer-sponsored group health plan coverage must do so for all employees who receive a Form W-2. Until further guidance is issued, the following exceptions apply:

- No reporting is required for individuals for whom a Form W-2 is not otherwise required (such as retirees or independent contractors with no wages)
- No reporting is required for any coverage provided following termination of employment (such as COBRA coverage, or post-termination coverage provided pursuant to a severance program or an employment agreement).

- However, employers can choose to report post-termination coverage as long as they do so consistently for all employees who terminate employment during the plan year.

Applicable coverage. Applicable employer-sponsored group health plan coverage generally includes any group health plan coverage excludable from income under Code section 106, with the following exceptions:

- Coverage for long-term care
- Employee pre-tax contributions to a Health Flexible Spending Arrangement
- Coverage provided by the Federal or State governments under plans maintained primarily for military members and their families
- Coverage under hospital indemnity or other fixed indemnity insurance, or coverage for a specified disease or illness (but only if these coverages are includable in the employee's income or paid with after-tax dollars)
- Coverage for HIPAA-excepted benefits listed in Code section 9832(c)(1) (except for on-site medical clinics, but see the last exception below)
- Contributions to a Health Savings Account or Archer Medical Savings Account*
- Coverage under a dental and vision plan that is a HIPAA-excepted benefit under Treas. Reg. §54.9831-1(b)(3) **
- Coverage under a Health Reimbursement Arrangement **
- Coverage under a multi-employer plan **
- Coverage under a self-insured church plan **
- Coverage under an employee assistance program, a wellness program or an on-site medical clinic (this exception applies ONLY if the employer does not charge a COBRA premium for the relevant coverage) **

* Employer contributions to a Health Savings Account or Archer Medical Savings Account are subject to a separate (pre-health reform) W-2 reporting requirement - these contributions must be reported on Form W-2 in Box 12 using Codes W (for HSA contributions) or Code R (for Archer MSA contributions).

** Notice 2012-9 indicates that these exceptions are “transitional” and may be modified in the future. Notice 2012-9 also indicates that employers have discretion to report these types of coverage if they wish to do so.

Aggregate cost. The aggregate cost of applicable coverage includes the portion of the cost paid by the employer and the portion of the cost paid by the employee (on either a pre-tax or after-tax basis). The cost of coverage is determined under one of three cost determination methods:

- **Method #1** – For self-insured plans, the cost of coverage is determined using the COBRA applicable premium. Notice 2012-09 does not provide any guidance regarding the calculation of the COBRA applicable premium for self-insured plans.
- **Method #2** – For fully-insured plans, the cost of coverage is determined using the premium charged by the insurance carrier.
- **Method #3** – In two special situations, the cost of coverage may be determined using a “modified” version of the COBRA applicable premium.
 - Situation #1 – If the employer subsidizes COBRA premiums and uses a reasonable good faith estimate of the COBRA applicable premium to determine the subsidized COBRA premium, the cost of coverage may be based on that reasonable good faith estimate.
 - Situation #2 – If the actual premium charged to COBRA qualified beneficiaries in the current year is equal to the COBRA applicable premium for the prior year, the cost of coverage may be based on the COBRA applicable premium for the prior year.

If a plan uses either a single coverage tier (i.e., when an employee elects coverage, all eligible family members are covered) or multiple coverage tiers (i.e., when an employee elects coverage, the employee must elect a specified level of coverage to enroll additional family members such as employee-only, employee-plus-one and employee-plus-two or more), the same cost of coverage may be determined for all employees in the applicable tier using one of the three cost determination methods.

If a plan uses a composite rate for active employees, but not for COBRA qualified beneficiaries, the employer may use either the composite rate or the applicable COBRA premium to determine cost, provided the same method is used consistently.

Additional rules. Notice 2012-09 includes the following additional rules:

- *Partial-year coverage.* Employers must determine aggregate cost taking into account both the actual period of coverage during the year (e.g., an employee's coverage begins July 1st, or ends on September 30th) and any changes in coverage tier during the year (e.g., an employee moves from employee-only coverage to employee-plus-one coverage).
- *Mixed coverage.* If a program provides benefits consisting of applicable coverage (such as medical coverage) and non-applicable coverage (such as disability coverage), an employer may use any reasonable allocation method to determine the cost of the portion of the program that provides applicable coverage.
- *End-of-year coverage.* If a coverage period includes December 31st and continues into the next calendar year, an employer may report the aggregate cost of the coverage in one of three ways: (i) treat all coverage as provided in the year that includes December 31st; (ii) treat all coverage as provided in the next year; or (iii) allocate the aggregate cost of coverage between the two years under a reasonable allocation method (which, the IRS suggests, should be based on the number of days that fall within each of the two years).
- *Flex credit contributions to Health FSAs.* If an employer makes flex credit contributions available under a cafeteria plan, the employer must report the amount (if any) by which an employee's Health FSA election exceeds the amount of the employee's pre-tax contributions for all cafeteria plan benefits including the Health FSA.
- *Mid-Year Forms W-2.* Employers are only required to report the aggregate cost of coverage on Forms W-2 issued after the end of a calendar year. If an employee terminates employment mid-year and requests a Form W-2 at that time (or if an employer routinely provides a Form W-2 in this circumstance), the employer is not required to report the cost of coverage on the mid-year Form W-2.
- *Multiple employers.* Generally, each employer providing employer-sponsored coverage must report the aggregate cost of coverage it provides. If related employers concurrently employ an employee and one of the employers is a common paymaster, then the common paymaster should report the aggregate cost of coverage provided by each employer being serviced by the common paymaster. If related employers concurrently employ an employee and do not use a common paymaster, then the related employers may choose to either report the entire aggregate cost of coverage on one Form W-2, or allocate the aggregate cost among the employers using a reasonable method of allocation.

- Third-party sick pay providers. Third-party sick pay providers generally are not required to report the aggregate cost of employer-sponsored coverage on Form W-2.

Future changes expected. Certain rules in Notice 2012-09 are intended to facilitate compliance by providing transition relief. The IRS specifically identifies the following rules as being subject to change:

- Relief for employers filing fewer than 250 Forms W-2
- Relief for employers furnishing Forms W-2 to employees mid-year
- Relief for coverage under a multi-employer plan
- Relief for coverage under a Health Reimbursement Arrangement
- Relief for coverage under a dental and vision plan that is a HIPAA-excepted benefit under Treas. Reg. §54.9831-1(b)(3)
- Relief for coverage under a self-insured church plan
- Relief for coverage under an employee assistance program, a wellness program or an on-site medical clinic (if the employer does not charge a COBRA premium for the coverage)

The IRS notes that if future guidance limits the availability of these rules, the future guidance will be prospective only and will not begin until January 1 of the calendar year beginning at least six months after the guidance is issued.

Resources. IRS Notice 2012-09 is available here - <http://www.irs.gov/pub/irs-drop/n-12-09.pdf>

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