



. . . Health Care Reform

IRS W-2 Form Reporting of the Cost of Health Care Coverage – New Guidance

Background: The Affordable Care Act requires that W-2 forms report the cost of employer health care coverage. Previous guidance in IRS Notice 2011-28 provided that this reporting will start with the W-2 forms for the 2012 calendar year (which will be sent to employees in the January, 2013). This cost of health care coverage is informational and not a report of taxable income. For 2012 the cost of employer health coverage must be reported by employers that filed 250 or more W-2 forms for 2011. Generally, the total cost of employer health coverage must be reported, regardless of whether it is funded by employer contributions, employee contributions or a combination of both types of contributions. IRS Notice 2012-9 was recently issued to replace IRS Notice 2011-28 and provide additional guidance. This alert will summarize some of the additional guidance.

Health Flexible Spending Accounts: If the only contributions to a health FSA is employee salary reduction contributions, then no W-2 reporting of the cost of the health FSA is required. On the other hand, if the employer makes flex credit contributions or matching health FSA contributions, then the cost of the health FSA must be reported, reduced by the amount of the employee salary reduction election for the health FSA for the plan year.

Dental and Vision Plans: The cost of dental and vision plan coverage is not treated as “applicable employer sponsored coverage,” provided such plans are “excepted benefits” under HIPAA. This means that they are either (1) offered under a separate plan (than the employer’s medical plan) or (2) if dental or vision is offered under the employer’s medical plan, dental and/or vision coverage requires an election and additional premiums or contributions. Consequently, the cost of coverage for most dental and vision plans will not be reportable.

Employee Assistance Plans, Wellness, On-Site Medical Clinics, Health Reimbursement Plans: The cost of EAP, wellness programs and on-site medical clinics are also not treated as reportable, unless the employer charges a premium for such coverage under federal COBRA contribution rules. The cost of HRA coverage is also not reportable, However, an employer *may* elect to report the cost of EAP, wellness, on-site medical clinic coverage and HRA coverage that is not otherwise required to be reported.

Plans Providing W-2 Reportable and Non-Reportable Coverage: If a welfare plan provides both W-2 reportable coverage and non-reportable coverage and the reportable coverage is incidental (such as a long-term disability plan with incidental medical coverage), then no W-2 cost reporting is required. On the other hand, if the reportable coverage is not incidental, the cost of such coverage must be reported, using any allocation method that is reasonable.

Hospital or Other Fixed Indemnity Plans: Reporting the cost of coverage for a hospital or other fixed indemnity plan, such as cancer insurance, depends on how such coverage is funded. If the employer contributes toward the cost of coverage, or the employee pays for the coverage with pre-tax contributions, then the cost of such coverage is reportable. If the employee pays for such coverage with after-tax contributions, then the cost of such coverage is not reportable.

Third-Party Administered Sick Pay: The IRS notice provides that the cost of health care coverage on must be reported on W-2 forms by the employer, regardless of whether a third party sick pay provider is furnishing separate W-2 forms reporting sick pay.

Amounts Otherwise Reported: The W-2 cost of health plan coverage generally includes amounts that are otherwise reported on the W-2 form, such as the discriminatory benefits for a highly compensated individual that is includable in taxable income under I.R.C. §105(h) or the taxable benefits of an individual who owns more than 2% of an S Corporation.

Reportable Cost Determined as of December 31: The amount an employer must report is to be determined based on the information available to the employer on the applicable December 31. Information that became available after such date that affects costs (such as notice of a divorce in the previous year) does not need to be taken into consideration in the calculation of the reportable cost of coverage.

Payroll Periods that End after December 31: If the last payroll of a year continues into the following year, the employer may (1) report the cost of coverage provided through the last payroll period *ending* in the calendar year; (2) report the cost of coverage provided through all the payroll periods *beginning* in the calendar year, or (3) *pro-rate* the cost through December 31, based on the number of days in each calendar year.

Comments: *This additional guidance is generally helpful, except for the requirement to report the cost of hospital and other indemnity plan coverage, such as cancer insurance, which is funded by employee pre-tax contributions.*

Please let us know if you have any questions or if we can be of assistance.

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Written by: Thomas C. Graves