IRS Updates Guidance on W-2 Reporting of Health Care Costs

January 5, 2012

In Notice 2012-9, published January 3, 2012, the IRS has updated guidance on employer reporting of group health care costs via Form W-2. The Notice replaces earlier guidance issued in March 2011 (Notice 2011-28). Reporting in January 2013 is mandatory for employers filing 250 or more Forms W-2 with respect to 2012 compensation.

The new guidance clarifies several points covered in the earlier Notice and adds new guidance on a number of issues. It does not provide permanent reporting relief to employers filing fewer than 250 Forms W-2 for the preceding year, but simply confirms that reporting duties are suspended for this group until further notice.

A brief summary of the clarified and new guidance follows:

Clarifications

• The cost of coverage provided under a health FSA does not need to be reported so long as the amount of the employee's salary reduction under the cafeteria plan (for all tax-qualified benefits) exceeds the amount set aside for the health FSA for the plan year (including salary deferrals plus employer flex credits the employee allocates to the health FSA, or an employer match based on the employee deferral.) A new example provided under Q&A 19 illustrates that use of an employer flex credit will not trigger reporting duties so long as employee deferrals exceed the health FSA amount. This is contrasted with an earlier illustration showing how an employer matching contribution to the health FSA can trigger reporting.
• The cost of dental or vision coverage need not be reported on Form W-2 if the dental or vision coverage constitutes limited scope "excepted benefits" for purposes of HIPAA. (Note: The Notice refers to excepted benefits under Section 54.9831-1(b)(3) of the HIPAA Regulations, but I believe the accurate citation is to Sec. 54.9831-1(c)(3)).)
• For purposes of the small employer exemption, the "fewer than 250" Form W-2 threshold is determined without regard to use of a reporting agent under Internal Revenue Code Section 3504. (Unlike traditional payroll companies such as ADP, agents under Code Section 3504 assume liability with regard to reporting functions).
• The reportable cost of coverage need not include coverage that is included in the gross income of a "highly compensated individual" as a result of failing nondiscrimination requirements under Code Section 105(h) (applicable to self-funded plans) or payments or reimbursements of health insurance premiums for a 2% shareholder-employee of an S-corporation.
• Employers using a composite rate for active employees but not for COBRA recipients may either use the composite rate to determine the aggregate cost of coverage for reporting purposes (consistent with methods described in Notice 2011-28 and repeated in Notice 2012-9, Q&A 25 through 27), or may use the applicable COBRA premium, provided that the methods used are consistent among active employees, on the one hand, and COBRA recipients, on the other.
• Related employers that share employees but do not use a common paymaster may report the aggregate cost of health care for a shared employee either by allocating the cost among the related employers (using any reasonable method of allocation), or by reporting the entire cost on a single Form W-2 issued by one of the employers.

• The exemption from health care cost reporting applicable to Federally recognized Indian tribal governments extends to wholly owned, tribally chartered corporations.

New Guidance

• So long as no COBRA premium is charged for participation in wellness programs, employee assistance programs (EAPs) or for use of on-site medical clinics (which generally is the case), the value of access to such programs need not be calculated and reported on Form W-2.
• Employers voluntarily may report the aggregate cost of coverage that is not required to be reported, such as the cost of coverage under a Health Reimbursement Account (HRA), a multi-employer plan, EAP, wellness program, or on-site medical clinic, provided that the cost of coverage is calculated according to existing guidance and provided that the coverage constitutes "applicable employer sponsored coverage" as defined in Q&A 12.
• Employers that offer group health coverage under a program that includes coverage that need not be reported (such as long-term care insurance) may calculate the reportable cost using any reasonable allocation method. Reporting relief is available with regard to "incidental" amounts of reportable or non-reportable coverage under certain circumstances.
• Employers may report the aggregate cost of coverage on Form W-2 for a calendar year based on information available to them as of December 31 of that year. No corrections need be made on the basis of information gained in the new year which would affect the cost of coverage in the prior year (such as an employee's divorce in the prior year). Further, once an employer issues a Form W-2 in the new year it need not issue a corrected Form W-2c on the basis of new information received before the Form W-2 reporting deadline.
• The cost of coverage for periods that include December 31 but continue into the subsequent calendar year may be reported in one of three ways: (a) as relating all to the calendar year ending December 31; (b) as relating all to the subsequent calendar year; or (c) allocated between the two years based on any reasonable allocation methods. The employer must apply the chosen method consistently to all employees.
• The cost of coverage under hospital indemnity or other fixed indemnity insurance, or for coverage for a specified disease or illness, must be reported if purchased with pre-tax dollars including through a cafeteria plan. Reporting is not required if the same types of coverage are purchased by the employee with after-tax dollars.
• The aggregate cost of health care coverage need not be reported on Forms W-2 prepared by third-party sick pay providers.

The Notice provides that any future expansion of the W-2 reporting requirements would be prospective only and would not apply earlier than January 1 of the calendar year beginning at least six months after the issuance of the guidance. Further, it clarifies that the existing transition relief for 2012 Forms W-2 (issued early in 2013), including the relief for small employers, is "locked in" and no longer subject to modification.

For a summary of earlier guidance on Form W-2 reporting of health care costs, click here.

http://www.irs.gov/pub/irs-drop/n-12-09.pdf
http://www.irs.gov/pub/irs-tege/n-11-28.pdf
http://eforerisa.wordpress.com/2011/03/31/notice-2011-28-transition-relief-and-more-on-w-2-reporting-of-health-care-costs/