CELEBRATING 75 yrs SPBG

SHEEHAN PHINNEY BASS + GREEN PA

the business law firm

Paul S. Reuland
Direct dial: 603.627.8189
Fax: 603.641.2360
preuland@sheehan.com

Good Company

The Tale of the Tape: Healthcare Reform Law Reaching the Workplace

Tuesday, February 07, 2012

The Patient Protection & Affordable Care Act (PPACA) imposes a number of mandates, on individuals, employers and insurers. While some mandates have been highly publicized others, including the requirement that employers include the aggregate cost of employer-sponsored health insurance on each employee's annual W-2 Form, are lesser known. As employers have begun to implement the reporting mandate numerous questions have arisen about the scope of the requirement, what type of plans must be reported, how to account for a change in employment or coverage status and how to calculate the reportable cost. In January of 2012, the Internal Revenue Service ("IRS") issued interim guidance on these topics, and many others, in Notice 2012-9, which amended its earlier guidance, Notice 2011-28. This article will briefly summarize some of the key points provided in these Notices.

Aggregate Cost of Employer-Sponsored Health Insurance

Under the Internal Revenue Code (the "Code"), the aggregate cost of applicable employer-sponsored group health insurance coverage must be reported on each employees annual W-2 Form. "Applicable employer-sponsored coverage" is defined as coverage under any group health plan that would be excluded from an employee's gross income under the Code. Under the PPACA, however, certain dental, vision and flex spending plans may be excluded from the reportable aggregate cost.

Dental and Vision Plans

An employer is not required to include the cost of coverage under a dental plan or a vision plan if such plan is not integrated into a group health plan. It is likely that the terms of the dental or vision plan in questions will make clear whether or not it is offered pursuant to an "integrated health plan." However, the IRS has stated that dental or vision benefits that are (1) not offered under the same policy, certificate, or contract of insurance under which major medical or other health benefits are offered and/or (2) may be refused by the participants are not considered part of an "integrated group health plan" and do not need to be included in the reportable cost.

Flex Spending Accounts

Reporting is required for health flexible spending arrangements ("FSA") that are offered through a cafeteria plan (as defined by the Code). In such a case, the amount of the FSA must be included in the aggregate reportable cost reported on the employee's W-2 to the extent the amount of the FSA exceeds the amount of the employee's salary reduction. This is

an exception to the general rule, which provides that the aggregate reportable cost of insurance includes the portion of the cost paid by the employer and the portion of the cost paid by the employee, regardless of whether the employee paid for that cost through pre-tax or after-tax contributions. These reporting requirements do not apply to the amount of any employee salary reduction contributions to a flexible spending account other than a FSA.

Changes in Employment or Coverage Status

IRS Notices 2012-9 and 2011-28 offer guidance on handling situations which arise in any employment relationship, such as a change in coverage or employment status.

Commencement of Coverage or Change in Coverage

If an employee commences or changes coverage during the year, the reportable cost must take into account the change in coverage. If an employee commences or changes coverage during the calendar year, an employer may use any reasonable method to determine the reportable cost for such period. For example, an employer may use the reportable cost at the beginning of the period or at the end of the period and average or prorate the reportable costs. However, the employer must use same method for all employees covered under the particular plan in question.

Termination

Much like reporting a commencement of change in coverage, an employer may use any reasonable method for reporting the aggregate cost for an employee who terminates employment during a calendar year. Again, the employer must apply whatever method he or she chooses consistently to all employees who terminate coverage under a particular plan. An employer is not required to report any amount on a W-2 for an employee who, before the end of the calendar year in which employment was terminated, requested to receive a W-2.

Retired Employees

An employer is not required to issue a W-2 including the aggregate reportable cost of health benefits to an individual to whom the employer is not otherwise required to issue a W-2, for example a retiree. However, the employer should report the prorated cost of coverage on the retired employees final W-2.

Calculating Reportable Costs

There are multiple methods that may be used to calculate the aggregate reportable costs of a health insurance benefit. Though an in-depth analysis of the methods is beyond the scope of this article, employers should keep several basics in mind, many of which have been discussed above. In particular, the reportable cost under a plan must be determined on a calendar year basis. While an employer is not required to use the same method of calculating the aggregate cost for every plan it offers, it must use the same method with respect to a plan for every employee receiving coverage under that plan. If the cost of coverage under a plan changes during the year, the reportable cost under that plan must reflect the increase or decrease. Self-insured plans may calculate the reportable cost based upon the past cost of the plan or an actuarial basis. Non self-insured plans may calculate the reportable cost based on the actual cost of the premium, the applicable Cobra Premium or a Modified Cobra Premium, depending on the particular circumstances involved.

When Reporting Begins

If an employer files fewer than 250 W-2 Forms, reporting is optional until taxable year 2014. If an employer files over 250 W-2 Forms, reporting is optional until taxable year 2013.

What About The Supreme Court case?

The U.S. Supreme Court has agreed to hear the challenges to aspects of the PPACA. Oral arguments are scheduled for April and a decision isn't expected before mid to late summer. No one can predict the outcome as federal appeals courts were split on the challenges so covered employers need to focus on compliance in the meantime.