

Group Health Plan Coverage Reporting Required For 2012 IRS Forms W-2

Certain employers are required to begin reporting the cost of coverage under employer-sponsored group health plans beginning with the 2012 Forms W-2 issued to employees (i.e., the forms required for the calendar year 2012 that employers will generally be required to provide employees in January of 2013). Employers should begin to take steps now to ensure that adequate processes and procedures are in place to track and record health coverage costs in 2012 to prepare for the new reporting requirement.

Background

The Patient Protection and Affordable Care Act of 2010 ("Affordable Care Act") amended the reporting provisions of the Internal Revenue Code to require that the aggregate cost of employer-sponsored health coverage be reported on an IRS Form W-2. The new reporting requirement does not cause otherwise non-taxable employer-provided health care coverage to become taxable – the Form W-2 reporting is for informational purposes only. According to the Internal Revenue Service ("IRS"), the purpose of the reporting requirement is to provide useful and comparable consumer information to employees regarding the cost of their health care coverage.

Under the Affordable Care Act, the Form W-2 reporting requirement was initially effective with respect to Forms W-2 issued for 2011. In Notice 2010-69, the IRS delayed mandatory compliance with this requirement until the Forms W-2 issued for 2012. Employers could, however, voluntarily begin reporting such amounts on the 2011 Forms W-2. In Notices 2011-28 and 2012-9, the IRS issued additional interim guidance that contained helpful clarifications regarding the Form W-2 reporting requirement and provided transition relief for certain employers and with respect to certain types of employer-sponsored coverage. The transition relief will continue at least through the 2012 Forms W-2 which are required to be furnished to employees in 2013 and will stay in effect until the issuance of further guidance by the IRS (the IRS will provide at least six months notice regarding any changes to the transitional relief).

Employers Subject to The Reporting Requirement: In general, all employers that provide "applicable employer-sponsored coverage" under a group health plan are subject to the reporting requirement, including federal, state and local governments, churches and other religious organizations, and employers that are not subject to the COBRA continuation requirements (to the extent such employers provide applicable employer-sponsored coverage under a group health plan). Federally recognized Indian tribal governments are exempt until further guidance is issued.

"Small" Employer Exception

Under the transitional relief provided in Notice 2012-9, an employer is not subject to the reporting requirement for the 2012 Forms W-2 (and Forms W-2 for later years unless and until further guidance is issued), if the employer was required to file fewer than 250 Forms W-2 for the preceding calendar year. For example, if an employer files 100 Forms W-2 for the 2011 calendar year, the employer will not be subject to the reporting requirement for Forms W-2 for the 2012 calendar year.

Types of Health Care Coverage That Must Be Reported: In general, affected employers are required to report the total cost of all "applicable employer-sponsored coverage" under a group health plan provided to an employee. Applicable employer-sponsored coverage is coverage under any group health plan made available to the employee by the employer that is excludable from the employee's gross income, or would be excludable, if it were employer-provided coverage.

Applicable employer-sponsored coverage does not include: (1) any coverage for long-term care; (2) coverage for certain HIPAA "excepted benefits;" (3) any coverage under a separate policy, certificate, or contract of insurance which provides benefits substantially all of which are for the treatment of the mouth

(including any organ or structure within the mouth) or for treatment of the eye; and (4) any coverage for a specified disease or illness and hospital indemnity or other fixed indemnity insurance, if the employee pays the premiums for the coverage on an after-tax basis.

In addition, the following amounts are not required to be included in the aggregate reportable cost (although considered applicable employer-sponsored coverage): (a) amounts contributed to any Archer MSA; (b) the amount contributed to any Health Savings Account (“HSA”); and (c) the amount of any salary reduction to a flexible spending arrangement.

Under the transition rules that apply until future guidance is issued, the following amounts also are not required to be reported: (i) the cost of coverage under a multiemployer plan; (ii) the cost of coverage under a Health Reimbursement Arrangement (“HRA”); (iii) the cost of coverage under a dental plan or vision plan, if that plan satisfies the requirements for being excepted benefits for the purposes of HIPAA pursuant to applicable regulations; and (iv) the cost of coverage provided under a self-insured group health plan that is not subject to any federal continuation coverage requirements.

Calculating the Cost of Coverage: In general, employers may calculate the cost of coverage under a plan using the applicable COBRA premium for the coverage. Other permissible cost calculation methods are detailed in Notice 2012-9, including using the premium charged by the insurer in the case of insured plans.

The reportable cost of coverage generally includes both 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 the cost through pre-tax or after-tax contributions (however, as explained above, the amount reported should not include salary reduction contributions to a health flexible spending arrangement).

Is a W-2 Required To Be Issued to Retirees? No, an employer is not required to issue a Form W-2 that includes the aggregate reportable cost of health coverage to an individual to whom the employer is not otherwise required to issue a Form W-2.

If an Employee Terminates Employment During the Calendar Year and Requests a Form W-2 Mid-Year, Does the Cost of Health Coverage Need To Be Included on the Form W-2? Under the transition rules that apply until future guidance is issued, if an employee requests a Form W-2 before the end of the calendar year, the employer is not required to report any amount of health benefits on the Form W-2.

How Is the Cost Of Coverage Reported On Form W-2? The aggregate reportable cost is reported on Form W-2 in box 12, using code DD.

Recommended Action

Employers subject to the reporting requirement for 2012 Forms W-2 should begin to prepare now for the additional reporting requirements imposed by the Affordable Care Act. Recommended compliance steps include identifying applicable health coverage that is subject to the reporting requirement, ensuring that proper record keeping exists with respect to contributions made for such coverage, determining the cost of the coverage, and working with payroll administrators and other third-party service providers to make sure that systems are in place to facilitate the tracking of such amounts. Employers also should review IRS Notice 2011-28 for further details regarding the reporting requirements. Early preparation should help ease the additional reporting burden that will begin in 2013.

If you have any questions about the Form W-2 reporting requirements, please contact John Godsoe in our Buffalo office (716.566.2850, jgodsoe@bsk.com) or any of the other members of our Employee Benefits and Executive Compensation Practice Group (<http://www.bsk.com/groups/detail.cfm?id=7&ShowAll=4>).

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