Compliance Alert

IRS Releases Additional Guidance on W-2 Health Insurance Reporting Requirement
Release Date: 1/9/2012

The IRS has released additional guidance regarding the W-2 health insurance reporting requirement contained in the Affordable Care Act (ACA). In Notice 2012-9 released January 5th, the IRS clarifies a number of issues addressed in earlier guidance and extends the small employer exemption (for employers filing less than 250 W-2s) from the reporting requirement. Notice 2012-9 clarifies a number of questions and republishes other guidance originally released March 2011 in Notice 2011-28. The new notice also adds eight new Q&As not included in the earlier guidance.

Background
The ACA requires employers to report the "aggregate cost" of certain types of employer provided health coverage on an employee's W-2. The reporting requirement does not affect the tax status of the benefits, but was designed to assist in collecting the data necessary to administer various provisions of the ACA.

Originally the reporting requirement was optional for tax year 2011, and required for the 2012 tax year (W-2s that are provided to employee in 2013). However, in earlier guidance the IRS further delayed the requirement for employers who file less than 250 W-2 for tax year 2011. Notice 2011-28 delayed the rule for these employers until the 2013 tax year (W-2s provided to employees in 2014)

The "applicable cost" of coverage is the entire cost, including both the employer and employee contributions, to an applicable plan. Self-funded plans are generally allowed to utilize the method used to determine applicable COBRA rates to calculate the aggregate cost of a plan. Applicable cost must be calculated on a monthly basis based on the specific coverage maintained by the employee. "Applicable employer-sponsored coverage" includes coverage under any group health plan made available to employees which is excludable from the employee's gross income under §106. However, certain benefits (which may be subject to §106) are specifically excluded from the reporting requirement.

Benefits not included in the W-2 reporting requirement:

- Stand-alone dental or vision coverage that meets the HIPAA definition of an "excepted benefit" Generally to be considered an excepted benefit, a dental or vision plan must meet one of the following two requirements:
    - The benefit must be provided under a separate policy, certificate, or contract of insurance; or
    - If the dental or vision coverage is provided under a single policy, certificate, or contract, the benefit must not be an integral part of the group health plan. The participant must have the right to elect not to receive the coverage, and if the participant elects to receive the coverage, they must pay an additional premium or contribution for it.
- Coverage issued as a supplement to liability insurance
- Workers' compensation or similar insurance
- Long-term care insurance
- Liability insurance, credit-only insurance and automobile medical payment insurance
- Coverage only for a specified disease or illness, hospital indemnity or other fixed indemnity insurance provided that such coverage is not coordinated with the employer's other health plans

Possible Further Delay for Small Employers
As stated above, The IRS had previously delayed the reporting requirement for employers who file less than 250 W-2s for the 2011 tax year. Notice 2012-9 takes this a step further and states that *"… until further guidance is issued, an employer is not subject to the reporting requirement for any calendar year if the employer was required to file fewer than 250 Forms W-2 for the preceding calendar year."*
Based on this guidance the filing requirement for small employers (those who file less than 250 W-2s) is delayed indefinitely until the IRS releases additional guidance.

Other Clarifications and New Information
Notice 2012-9 also includes a number of other clarifications and new guidance.

Updated guidance

- Clarifies that the reporting requirement does not apply to coverage under a Section 125 health flexible spending arrangement (HFSA) if contributions occur only through employee salary reduction elections. However, if the employer makes a contribution to an HFSA, the cost would be reportable.
- Clarifies that the reporting requirement does not apply to payments or reimbursements of health insurance premiums for a 2% shareholder-employee of an S corporation who is required to include the premium payments in gross income.

New guidance

- Provides that employers are not required to include the cost of coverage under an employee assistance program (EAP), wellness program, or on-site medical clinic in the reportable amount if the employer does not charge a premium for these types of coverage provided under COBRA. However, if the employer charges a COBRA premium for any of these types of coverage, the cost of the plan must be included in the aggregate cost for all employees, not just those who have experienced a COBRA event.
- Clarifies that employers may include the cost of coverage under programs not required to be included under applicable interim relief, such as the cost of coverage under a Health Reimbursement Arrangement (HRA). Some employers may choose to include HRA costs, even though not required, since it may make it administratively easier to calculate an employee's aggregate cost.
- Guidance on some administrative issues such as:
    - How to calculate the reportable amount if an employer is provided notice after December 31 of events that occurred on or before December 31 that affect the prior year's coverage, such as an employee providing an employer notice of a divorce or other change in family status that occurred during a prior calendar year
    - How to calculate the reportable amount where coverage extends over the payroll period including December 31

Summary
While actually including the aggregate cost on employee's W-2s will not be difficult, the collection of the data necessary to calculate each employee's amount will create some work for the employer's human resource and employee benefits departments. If they have not already done so, employer's who will be required to report health insurance costs of tax year 2012 must quickly develop a system to track the necessary information on W-2s sent in January 2013.

Employer's who file less than 250 W-2s do not need to worry about this requirement for now, but should continue to monitor the situation in the event that the IRS eventually issues guidance making the rule applicable for small employers sometime in the future.

Notice 2012-9 is available at http://www.irs.gov/pub/irs-drop/n-12-09.pdf