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Health Care Reform: New IRS Guidance on W-2 Reporting of Health Care Coverage

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The federal health care reform law, the Patient Protection and Affordable Care Act, requires employers to report the cost of employer-sponsored health coverage on employees' W-2 forms. The IRS recently released additional information on this requirement: Notice 2011-28, available at <http://www.irs.gov/pub/irs-drop/n-11-28.pdf>.

This article summarizes the additional information, including the effective date, how to calculate the cost of coverage, which benefits (e.g., vision and dental) to include in the calculation, and certain exceptions. The cost of health coverage is reported in Box 12 of the

W-2 form, under code DD.

It's important to note the requirement to report the cost of the health coverage on an employee's W-2 does not mean the value of the health coverage is included in the employee's taxable income. The reporting requirement is for informational purposes only and the cost of the health coverage is not included in the employee's taxable income.

Effective Date

Under previous guidance from the IRS, the W-2 reporting requirement was waived for 2011. The new

guidance confirms that large employers (250+ employees) are not required to report the cost of health coverage on W-2 forms issued for 2011 (typically issued in January 2012). Large employers will need to report the cost of coverage on W-2 forms issued for 2012 (those issued in January 2013). Notably, the new guidance indicates that large employers will not have to report the cost of coverage on interim W-2 forms requested by employees before the end of the calendar year. Therefore, the first time that large employers are required to report the cost of health coverage is on the W-2 forms issued in January 2013 (for 2012 wages).

For smaller employers (employers required to file fewer than 250 Forms W-2 for the preceding calendar year), Notice 2011-28 states that they are not subject to the reporting requirement for health coverage until and unless required to comply at a later date by subsequent guidance, and in no instance will this requirement be imposed prior to W-2 forms issued in January 2014 for 2013 wages.

Calculating the Cost of Coverage

Employee Contributions Included: The reported cost of coverage

includes both the amount paid by the employer and the amount paid by the employee. So, if an employer contributes \$900/month for the employee's coverage and the employee contributes \$100/month for each month in a calendar year, the amount reported on the W-2 for the year is \$12,000.

Cost of Dependent Coverage

Included: The reported cost of coverage includes the cost of coverage for any other persons covered under the plan as a result of the relationship with the employee (e.g., spouse, children, domestic partner, etc.). So, if an employee elects family health coverage that costs a total of \$2,000/month, the annual cost reported on the employee's W-2 will be \$24,000. If an employee changes coverage during the year (for example, adding a new dependent), the reported cost of coverage should reflect those changes. So, if an employee had self-only coverage for January through March, and then had a baby and switched to family coverage for April through December, the reported cost of coverage is the cost of the self-only coverage for three months plus the cost of family coverage for nine months.

Three Methods for Calculating

Cost of Coverage: The guidance offers employers three options for calculating the cost of coverage. First, employers can simply use the same method used to calculate the COBRA premium (without including the additional two percent allowed under COBRA). Second, employers with insured plans can choose to use the premium charged by the insurer. The third option clarifies that employers who subsidize COBRA coverage

must use the full, unsubsidized COBRA premium amount to calculate the cost.

The guidance does not provide any additional guidance on how to properly compute COBRA premiums for self-funded plans. The Notice merely states that employers must continue to calculate the COBRA premiums "in good faith

compliance with a reasonable interpretation" of COBRA.

Mid-Year COBRA Election

For employees that terminate mid-year and elect COBRA (or other continuation) coverage, the new guidance allows the employer to use "any reasonable method" of reporting the cost of coverage

The graphic features a teal and blue color scheme with abstract white line art. The title is centered in a yellow banner. The text is arranged in a dark blue box on the right side. The logo for Stoel Rives LLP is at the bottom left of the graphic.

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while the employee is on COBRA, as long as the method is used consistently for all employees on COBRA. The guidance gives two examples of reasonable methods: the employer can choose to report the cost of health coverage only when the employee was an active employee, or the employer can choose to also report the cost of health coverage when the employee was on COBRA.

Which Benefits to Include

- **Vision/Dental:** Vision and dental benefits should be included in the reported cost of coverage if they are “integrated” into the group health plan. Vision and dental benefits should not be included in the reported cost of coverage if they are provided under a separate policy, certificate or contract of insurance.
- **Health Flexible Spending Accounts (FSAs):** The amount contributed by an employee to a health FSA *should not* be included in the reported cost of coverage reported on the W-2. However, if an employer contributes money to the employee’s health FSA, the amount of the employer’s contribution *should* be included. For employers offering flex credit or flex dollar programs, the reported cost of coverage is amount of employer flex dol-

lars which the employee allocates to the health FSA (the total amount in the employee’s health FSA for the calendar year, minus the amount contributed by the employee through the employee’s payroll deduction).

- **Health Savings Accounts (HSAs) and Archer MSAs:** Amounts contributed to these accounts should not be included in the reported cost of coverage reported on the W-2.
- **Health Reimbursement Arrangements (HRAs):** Amounts contributed to an HRA should not be included in the reported cost of coverage reported on the W-2.
- **Specific Disease Policies/Hospital or Other Fixed Indemnity Policies:** These benefits (such as a cancer policy) are not included in the reported cost of coverage in most instances.

Current Exceptions

- **Retirees:** Employers do not have to report the cost of health care coverage for any individual for whom the employer does not have to issue a W-2. Therefore, employers do not have to report health care coverage costs for retirees who did not work for the

employer during the calendar year in question.

- **Multiemployer Plans:** Employers that provide coverage to their employees through a multiemployer plan are not subject to the W-2 reporting requirement.

The IRS indicates that future guidance may change these requirements and exceptions, but no future guidance will take effect until the calendar year beginning at least six months after the new guidance is issued.

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