

American Benefits Council Preparing for PPACA Webinar Form W-2 Guidance

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May 26, 2011



What We'll Cover

- Definition of Group Health Plan
- COBRA calculation methodology: issues for self-insured employers
- Key Compliance Issues for Employers



New Code § 6051(a)(14)

- Requires reporting of “aggregate cost” of “applicable employer-sponsored coverage” on Form W-2
 - “Applicable Employer-Sponsored Coverage” defined in new Code § 4980I (excise tax for high cost health plans)
 - Aggregate cost is to be determined under rules similar to the rules of Code § 4980B(f)(4), referring to the definition of “applicable premium” for purposes of COBRA coverage

Definition: Applicable Employer-Sponsored Coverage

- Broadly defined as coverage under any group health plan that is or, if paid by employer, would be excludable from income under Code § 106
- Group Health Plan: Any plan (whether insured or self-insured) of, or contributed to by, an employer to provide health care
 - May rely on good faith interpretation of statutory provisions and applicable guidance, including definition in IRS COBRA regulations



Exceptions: Applicable Employer Sponsored Coverage

- Long-term care coverage
- Accident and disability coverage
- Certain stand-alone vision or dental coverage not "integrated" with medical coverage
- Specified disease, hospital indemnity and other fixed indemnity coverage when paid on an after-tax basis
- HSA, MSA, (for now) HRA, and, in most circumstances, health FSA



Examples: Applicable Employer Sponsored Coverage

- On-site medical clinics
- Wellness programs
 - Such as cholesterol screenings, physical examinations
- Employee Assistance Programs
 - If they provide any medical care, such as trained counselors who provide some form of counseling
- Executive medical reimbursement plans
 - Often unfunded, self-insured plans to provide unlimited coverage for medical expenses of top executives and their dependents



Aggregate Reportable Cost

- Both employer and employee portions of cost included
- Does not matter whether employee paid through pre-tax or after-tax contributions
 - No adjustment for imputed income amounts



Calculating the Cost of Coverage

- Aggregate cost to be determined under “rules similar to COBRA”
 - IRS Notice 2011-28 provides *three* permissible methods
 - COBRA applicable premium method,
 - Premium charged method (for insured plans), or
 - Modified COBRA premium method
- Notice did not resolve how to calculate COBRA premiums for self-funded plans



Applicable Premium for Self-Insured Plans

- Unlike insured plans, self-insured plans cannot simply rely on insurance premiums charged
- Existing COBRA rules govern calculation, generally under one of two methods:
- Actuarial method
 - Requires information on prior claims, derivation of trend factor, information about stop-loss cost, and creation of tiers; actuaries may differ
 - Past cost method
 - Applies only if no significant change in coverage offered or in number of employees covered under plan from past year; prior amount is adjusted by percentage increase (or decrease)



Key Compliance Issues

- Identifying & valuing reportable coverage
- Tracking employee terminations and coverage changes during plan year
- Additional challenge for mergers/acquisitions
- Complicated rule relating to FSAs
- Mistakes happen- when is correction necessary?
- Expiration of transition relief

AMERICAN BENEFITS COUNCIL PREPARING FOR PPACA

FORM W-2 GUIDANCE

SETH PERRETTA

MAY 26, 2011



New Form W-2 Reporting Requirement

- » How do the new reporting requirements relate to the high-cost “Cadillac” plan excise tax under PPACA?
 - Applicable employers
 - Reportable coverage
 - Issue of using COBRA valuation as a taxing mechanism

High-Cost “Cadillac” Plan Excise Tax

- » Effective 2018, PPACA imposes a new 40% excise tax on value of employer-provided coverage exceeding certain dollar thresholds (with increased thresholds available to select groups)
 - Generally applies to all health coverage provided and/or sponsored by an employer regardless of whether paid by employer, through pre-tax salary reduction by employee, or by employee on after-tax basis
 - If value exceeds thresholds, then must be reported to responsible parties for payment of excise tax liability
 - Responsible parties (*i.e.*, plan administrators and/or insurers) must then pay a 40% excise tax on their share of excess
 - The tax is **NOT** deductible for federal income tax purposes
 - Is Form W-2 Reporting the first step to implementing the excise tax?
 - How are the two regimes the same and different?
 - Is COBRA valuation suitable as a taxing regime?

Form W-2 Reporting v. “Cadillac” Plan Excise Tax

Which Employers Are Subject to the Rule?

Form W-2 Reporting

- Applies generally to all employers that provide “applicable employer-sponsored coverage”
 - ✓ All private sector employers
 - ✓ Federal, state and local government entities
 - ✓ Churches and other religious organizations
 - ✓ Employers that are not subject to federal COBRA
- Does not apply to transition-eligible small employers and Indian tribal governments

But see next slide regarding excepted plans

“Cadillac” Plan Excise Tax

- Applies at the level of the issuer or plan administrator if self-insured
- Practically, employers and/or employees will bear the cost (via increased premiums)
 - Generally same employers will be subject to excise tax as are subject to the new reporting requirement
 - Interesting issues regarding taxation of state entities

New Form W-2 Reporting Requirement

» Which Plans Are Subject to Reporting?

- Applies generally to all “applicable employer-sponsored coverage”

IN




- ✓ Group health plans
 - Major medical
 - “Mini-med”
 - On-site medical clinics
 - Medicare supplemental
 - Medicare Advantage
 - Employer flex credits into an IRC§ 125 health flexible spending arrangement (HFSA)

OUT



- ✓ “Non-integrated” dental and vision
- ✓ Long-term care
- ✓ Amounts salary reduced into HFSA
- ✓ Health Savings Accounts (HSAs)
- ✓ Health Reimbursement Arrangements (HRAs)
- ✓ Accident, disability and AD&D
- ✓ Workers’ compensation and similar coverage
- ✓ Automobile medical payment
- ✓ Self-insured governmental and church plans
- ✓ Government-provided military coverage
- ✓ Employer contributions to multiemployer plans
- ✓ If HIPAA-excepted and paid on after-tax basis:
 - Hospital or fixed indemnity insurance
 - Specified disease or illness insurance

 = Expanded per rulemaking

Form W-2 Reporting v. “Cadillac” Plan Excise Tax

» Which Plans Are Subject to Reporting for Purposes of the Excise Tax?

- Applies generally to all “applicable employer-sponsored coverage”

IN

- ✓ Group health plans
 - Major medical
 - “Mini-med”
 - On-site medical clinics
 - Medicare supplemental
 - Medicare Advantage
 - ~~Employer flex credits into an~~ IRC§ 125 health flexible spending arrangement (HFSA)
 - **Health Savings Accounts (HSAs) to the extent of any employer contributions (including amounts contributed by an employee through a cafeteria plan)**
 - **Health Reimbursement Arrangement (HRA)**

OUT

- ✓ “Non-integrated” dental and vision **“under a “separate policy or contract of insurance”**
- ✓ ~~Long-term care~~
- ✓ ~~Amounts salary reduced into HFSA~~
- ✓ Health Savings Accounts (HSAs) **to the extent of after-tax contributions (although may be deductible on Form 1040)**
- ✓ ~~Health Reimbursement Arrangements (HRAs)~~
- ✓ Accident, disability and AD&D
- ✓ Workers’ compensation and similar coverage
- ✓ Automobile medical payment
- ✓ ~~Self-insured governmental and church plans~~
- ✓ Government-provided military coverage
- ✓ ~~Employer contributions to multiemployer plans~~
- ✓ If HIPAA-excepted and paid on after-tax basis:
 - Hospital or fixed indemnity insurance
 - Specified disease or illness insurance

 = Changes to conform to excise tax application per the statute

Questions?

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