



## EMPLOYERS WILL BE REQUIRED TO REPORT THE COSTS OF EMPLOYER PROVIDED HEALTHCARE ON EMPLOYEES' W-2s

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Beginning with 2012, large employers (*i.e.*, those filing 250 or more W-2s for the previous year) are required to provide information reporting on the costs of their employees' group health plan coverage. Smaller employers (*i.e.*, those filing less than 250 W-2s for the previous year) will not be required to report the costs of health coverage until additional guidance is issued by IRS. The reporting requirement will *not* cause employer healthcare coverage to become taxable to employees. The IRS, in Notice 2011-28, recently provided guidance to employers on how to determine the reportable costs, as well as some transitional relief from the reporting requirements.

The aggregate cost of applicable employer-sponsored coverage must be reported on Form W-2s. The aggregate cost includes both the employer paid and employee paid costs, whether those contributions are made pre-tax or after-tax.

Certain health coverages are excluded and do *not* need to be reported. These include: (i) Archer MSAs; (ii) health savings accounts; (iii) salary reduction contributions to a flexible spending arrangement; (iv) excepted benefits provided under separate policies or plans (*e.g.*, AD&D; disability income benefits); (v) general and automobile liability insurance, including automobile medical payment insurance; (vi) workers' compensation; (vii) credit-only insurance; (viii) long-term care policies; (ix) limited scope dental and vision plans; (x) limited coverage for a specified disease or illness (*e.g.*, cancer); and (xi) hospital indemnity or other fixed indemnity insurance. (The limited coverages described in (x) and (xi) are only excluded if the payments are included in the employee's gross income and not otherwise deductible under Code § 162(1)). In addition, the following costs do not need to be reported until further guidance is issued by IRS: (i) the cost of coverage provided to an employee under a multiemployer plan; (ii) the cost of coverage provided under a self-insured group health plan that is not subject to COBRA (*e.g.*, a church plan); and (iii) contributions made by the employer to health reimbursement accounts.

In calculating the reportable cost, employers may use the following methods: (i) the COBRA applicable premium rate; (ii) the premium charged rate; or (iii) the modified COBRA premium rate. The *COBRA applicable premium rate* is the calculation made in good faith compliance with a reasonable interpretation of statutory requirements under COBRA. The *premium charged rate* is used only for insured group health plan coverage



and is the actual premium charged by the insurer for the employee's coverage for such period. The *modified COBRA premium rate* is used only if an employer subsidizes the cost of COBRA for qualified beneficiaries or an employer determines to use the COBRA applicable premium of a prior year. If the employer subsidizes COBRA premiums, the employer may determine reportable costs based on a good faith estimate of what the COBRA applicable premium would be without the subsidiary. If the employer decides not to make a new determination of the COBRA applicable premium for the current year, but rather continue to charge qualified beneficiaries the COBRA applicable premium of the prior year, the prior year COBRA premium can be used as the reportable cost for the current year.

If an employer uses a composite rate in determining premiums charged to employees for health coverage (*e.g.*, one cost is charged regardless of whether the coverage elected is for self-only or family), then the employer may use the composite rate for all the different types of coverage for which the same premium is charged for employees.

The aggregate cost is reported on Form W-2, Box 12, using Code "DD." If no Form W-2 is issued to an individual in a given year, then the employer does not have to report the aggregate cost of employer-sponsored health coverage. For instance, retirees or other former employees who receive health coverage from their former employer but do not receive any compensation from the employer would not receive reporting on the cost of their healthcare coverage. In addition, if an employee is terminated and a Form W-2 is issued prior to the end of the calendar year, the employer is not required to report the cost of health coverage for such year.

Large employers should immediately discuss with their healthcare and payroll providers what needs to be done to collect the data beginning next year.