



DATE: December 27, 2011
TO: Our Valued Client Partners & Friends
FROM: HIB Account Team
RE: **LEGISLATIVE UPDATE 2011-12:
W-2 Health Care Reporting Requirements: Once and For All – For Now**

We are pleased to bring you our **Legislative Update 2011-12: W-2 Health Care Reporting Requirements: Once and For All – For Now**. This memorandum provides an overview of the W-2 Reporting Rules under Health Care Reform (HCR). As always, please feel free to contact your HIB Account Team for assistance.

W-2 HEALTH CARE REPORTING REQUIREMENTS: ONCE AND FOR ALL – FOR NOW

Ever since the Affordable Care Act (HCR) became law, the HCR W-2 reporting rules have confused even the best and the brightest. At one point, there even was a rumor that employer-sponsored health care coverage would now be taxable (and it is not). The IRS Notice [2011-28](#) provides us with more guidance and interim relief.

A BRIEF HISTORY

1. **Patent Protection and Affordable Care Act.** Section 9002 of the Act would have required employers to disclose the value of health coverage on W-2s for the 2011 tax year. It is and was intended as informational reporting only.
2. **Notice [2010-69](#).** The Internal Revenue Service (IRS) published this Notice on October 12, 2010. The Notice made the 2011 tax year reporting optional, but affirmed that, with the 2012 tax year, the reporting would be mandatory. It reiterated the rule that the coverage to be reported would be coverage for which COBRA would apply.
3. **IRS Notices [2011-28](#) and [2011-31](#).** And here comes relief. Although these Notices were issued with a request for comments, they provided the following new information:
 1. Reporting remains optional for the 2011 tax year;
 2. For employers filing fewer than 250 W-2 Forms for the 2011 tax year, filing would remain optional for 2012 or until further guidance;
 3. All employers who provide group health coverage (including public agencies and churches) other than Indian Tribal Governments or for plans maintained primarily for the military, must file the expanded W-2 Forms by January 31, 2013 (exception for those with less than 250 W-2 filings); and,
 4. Clarification of what constitutes health care coverage.



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DISCUSSION

1. **What Coverage Is To Be Reported.** Notice 2011-28 generally repeats the list of reportable lines of coverage; however, it is important to note that freestanding dental and vision benefits are excludable. Using the exclusions permitted under HCR, as well as the Health Insurance Portability and Accountability Act (HIPAA) excepted benefits rules, dental and vision benefits are excludable if they are provided under a separate policy, certificate, or contract of insurance, or otherwise not an integral part of a group health plan (e.g. self-funded plans). To be considered “not integral” the participant must have the right to elect or not elect the dental (or vision coverage) and if elected, must make additional premium contributions. (45 CFR §146.145(c)(3)(ii)).
 - **Health Savings Accounts.** Q&A 16 of the Notice specifically excludes employer contributions to HSAs and Archer MSAs.
 - **Pre-tax Contributions Under IRS Section 125 Cafeteria Plans.** Although salary reduction agreements operate to convert after-tax salary to an employer contribution, the Notice states the contributions are excluded from the amount to be reported on the W-2. Employer contributions to a health FSA in excess of any salary reduction amounts are, however, reportable, as to the amount in excess of the employee –pre-tax contribution.
 - **Collectively Bargained Plans.** Contributions made by an employer to a multi-employer (union) plan also are not reportable.
 - **Health Reimbursement Accounts.** An employer is not required to include the cost of an HRA in determining the aggregate reportable cost.
 - **Other Exceptions.** If a self-funded health plan is not subject to federal COBRA (i.e. church plans) then the cost of coverage is not reportable. However, the cost of coverage for any self-funded health plan which is subject to federal COBRA, must be reported. In the cases of self-funded discriminatory group health plans under IRC Section 105(h), the amounts reported as taxable to the highly compensated individual are not included in the calculation of what is reportable.

Additionally, the following are also not subject to the reporting requirement:

- Coverage only for accident, or disability income insurance, or any combination thereof;
- Coverage issued as a supplement to liability insurance;
- Liability insurance, including general liability insurance and automobile liability insurance;
- Workers’ compensation or similar insurance;
- Automobile medical payment insurance;
- Credit-only insurance;



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- Other similar insurance coverage, specified in regulations, under which benefits for medical care are secondary or incidental to other insurance benefits;
 - Coverage only for a specified disease or illness; and
 - Hospital indemnity or other fixed indemnity insurance.
2. **How to Calculate the Aggregate Reportable Cost of Coverage.** The Notice describes three methods an employer can use for determining the aggregate reportable cost of coverage:
- **The COBRA Applicable Premium Method.** This means the cost for each individual would be the same as it would be for any similarly situated individual (e.g. single coverage, Grammercy location's UHC health plan)
 - **The Premium Charged Method.** Here, the employer would use the insurance company's rate structure (e.g. 3-rate basis).
 - **The Modified COBRA Premium Method.** An employer could use this method in the event it subsidizes the cost of COBRA (e.g. absorbs a rate increase without changing COBRA rates). If the employer makes a good faith estimate as to the actual COBRA premium (e.g. self-funded plan), then the estimate is to be included in the aggregate cost.
3. **What About Terminated or Retired Employees?** The Notice provides guidance on how to report the cost of coverage for individuals who terminate employment during the reportable year:
- **Mid-year Termination.** If an employee terminates mid-year (e.g. April 30) and elects COBRA, the employer has the option to include only the cost of the coverage provided during active employment or to include the COBRA coverage. The employer must use one method or the other consistently for all terminations in the year. If the former employee asks for a W-2 before the end of 2012, it does not need to include the cost of health coverage.
 - **Related Employers.** If an employee transfers from one employer to a related employer and the employee receives one W-2 from a common paymaster, then the W-2 must show the aggregate cost even though health plans may be different.
 - **Employees in a Merger.** If the employee continues employment with the successor employer, then it will depend on whether the successor employer and the predecessor employer each issue a W-2. If the successor employer under the terms of the merger and in accordance with IRS rules aggregates total annual wages for both seller and buyer, then the W-2 should include the total aggregate cost of coverage. Otherwise, each employer reports its own aggregate cost of coverage.
 - **Retirees and Other Former Employees.** If an employer provides retiree health coverage, that employer is not required to issue a W-2 just to report the value of the coverage. If an individual retires mid-plan year, the cost of coverage while an active employee would be reportable on that year's W-2.



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Although Notice 2011-28 is fairly definitive, we expect to have further clarification for employers who file less than 250 W-2s for the 2013 tax year.

We will keep you posted on further developments.

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