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W-2 Reporting of Employer Health Coverage: The Clock is Ticking

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W-2 Reporting of Employer Health Coverage: The Clock is Ticking

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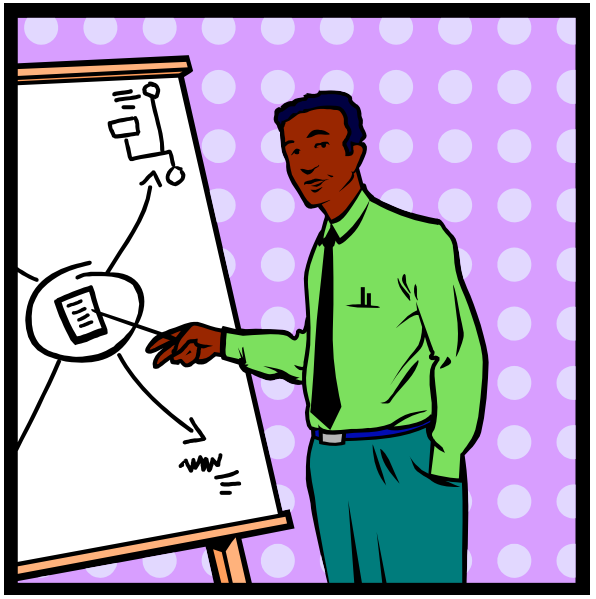
Agenda

- Overview
- Covered Employers
- Reportable Coverage
- Exemptions
- Valuation of Coverage
- Employer Action Steps

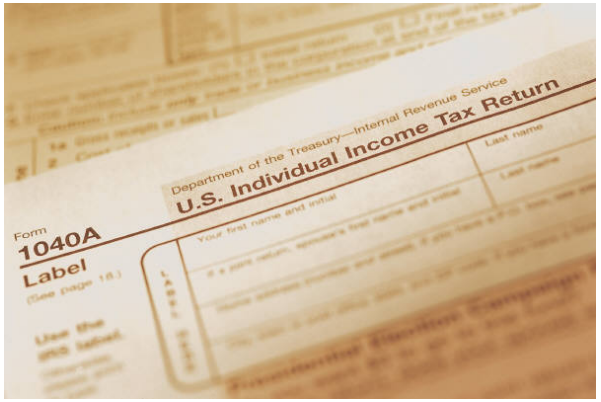


Overview

- PPACA requires that employers report, on Form W-2, the aggregate value of applicable employer-sponsored coverage
- **Optional** for 2011
- **Mandatory** for 2012 (for W-2s to be provided in January 2013)

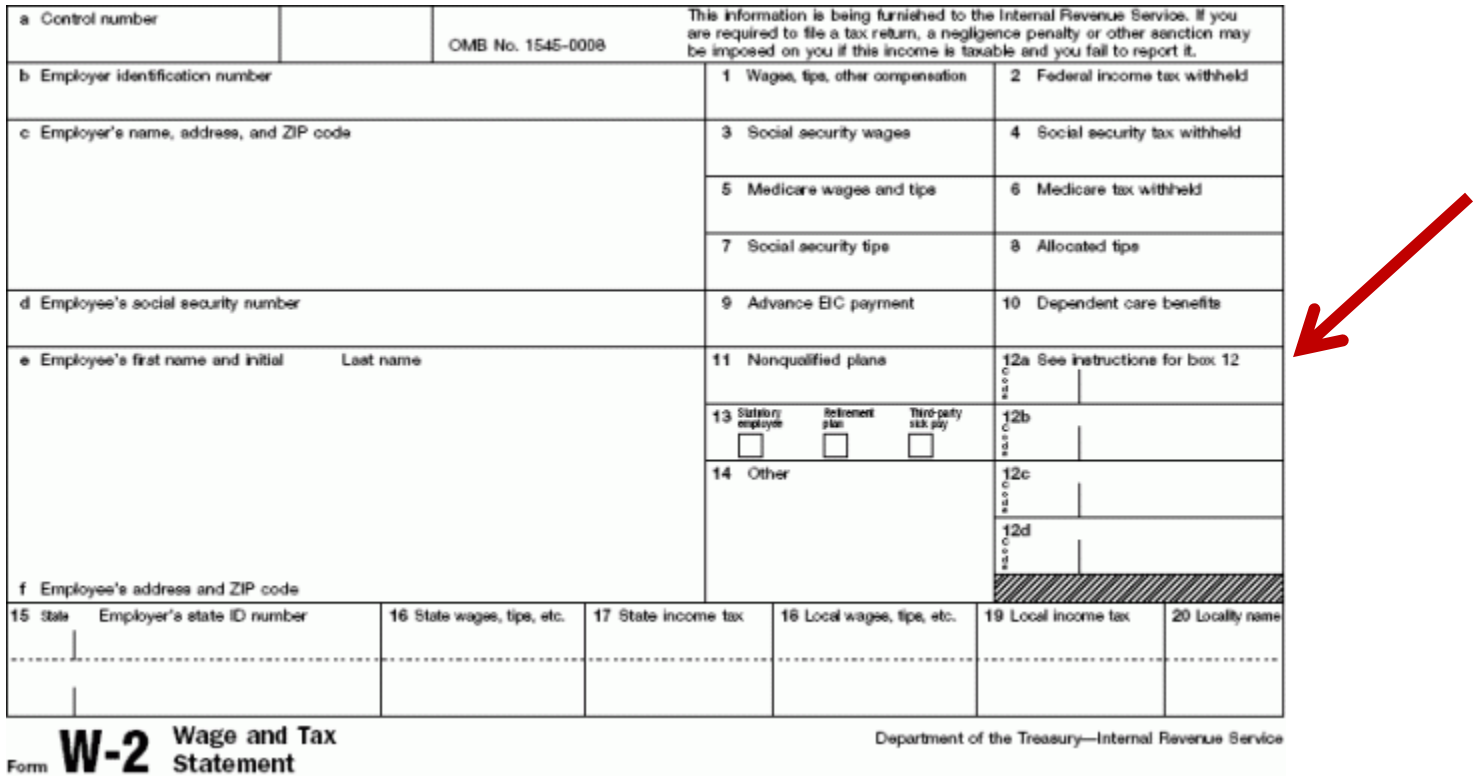
Overview

- IRS guidance:
  - Notice 2011-28
  - Notice 2012-9 (largely replaces Notice 2011-28)
  - 11 FAQs and chart (2-15-12)
- Reporting does **not** affect tax treatment of employer-sponsored health coverage
  - For informational purposes only
  - At least for now



Overview

- Reported in Box 12, using Code DD



a Control number | OMB No. 1545-0008 | This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

b Employer identification number | 1 Wages, tips, other compensation | 2 Federal income tax withheld

c Employer's name, address, and ZIP code | 3 Social security wages | 4 Social security tax withheld

5 Medicare wages and tips | 6 Medicare tax withheld

7 Social security tips | 8 Allocated tips

d Employee's social security number | 9 Advance EIC payment | 10 Dependent care benefits

e Employee's first name and initial Last name | 11 Nonqualified plans | 12a See instructions for box 12 Code

13 Statutory employee ☐ Retirement plan ☐ Third-party sick pay ☐ | 12b Code

14 Other | 12c Code

12d Code

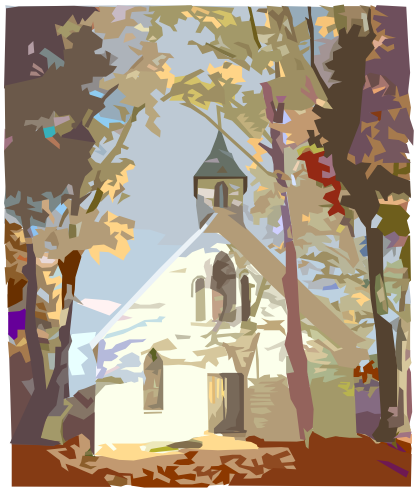
f Employee's address and ZIP code

15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

Form **W-2** Wage and Tax Statement — Department of the Treasury—Internal Revenue Service

Covered Employers

- Private employers
- Governmental entities (except Indian tribal governments)
- Churches and other religious organizations



Small Employers

- Transition relief for small employers:
  - Employers that were required to issue fewer than 250 W-2s for the prior year are exempt
  - For this purpose, must disregard any agent hired to handle W-2 reporting (e.g., common paymaster)
  - Applies on a common-law employer basis, rather than to a controlled group
  - Transition relief applies until further guidance is issued

Example One

- Corporation A filed 200 W-2s for 2011. Its wholly-owned subsidiary (Corporation B) filed 100 W-2s for 2011.
  - Neither corporation would be required to report for 2012, because neither filed 250 W-2s.
  - However, if Corporation B had been a **division** of Corporation A (i.e., they shared a single tax ID number), both entities would have been subject to the reporting requirement for 2012.

Example Two

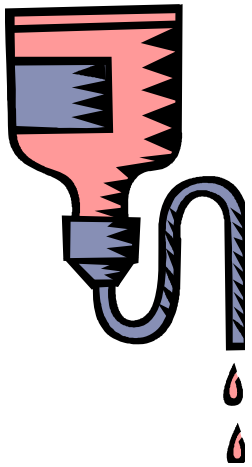
- Corporation A filed 500 W-2s for 2011, but no single division or worksite had 250 employees. Moreover, only 100 of its employees had elected health coverage.
  - Corporation A would be required to report for 2012, because it filed more than 250 W-2s for 2011.
  - Number of employees having health coverage is irrelevant.

Reportable Coverage

- Coverage is “reportable coverage” if part of “group health plan”
- For this purpose, may use COBRA definition. 26 C.F.R. §54.4980B-2 (Q&A-1)
  - Plan maintained by an employer or employee organization, and
  - Providing “medical care” to individuals with an employment-related connection

Reportable Coverage

- Reportable coverage includes:
  - Medical
  - Prescription drug
  - Dental (unless exempt)
  - Vision (unless exempt)
- Either insured or self-funded
- Also includes dependent coverage



Reportable Coverage

- Generally, must report value of both non-taxable **and** taxable health coverage
  - **Example**: Taxable coverage provided to domestic partner or child over age 27
- But should **not** report (in Box 12) benefits that are taxable only **. . .**
  - Due to violation of Code Section 105(h) nondiscrimination rules, or
  - Because received by a 2% or greater S corporation shareholder

Non-Reportable Amounts

- The following are not "reportable coverage" (and therefore should **not** be reported):
  - Contributions to
    - Health Savings Accounts ("HSAs")
    - Archer Medical Savings Accounts
    - Note, however, that these contributions must be reported in same box (Box 12), using Code **W**
  - Accident, long-term care, disability income, workers' compensation, or life insurance
  - Health club memberships

"Noncoordinated" Benefits

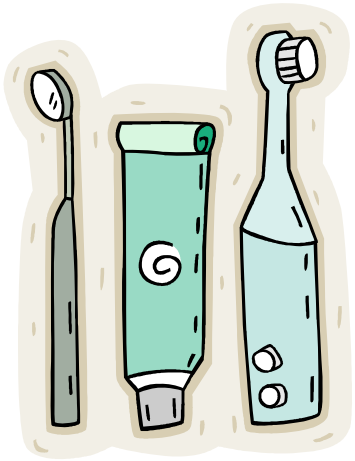
- Hospital indemnity insurance and coverage for a specific disease or illness:
  - Should **not** be reported if premiums are paid exclusively by employees on an **after-tax** basis
  - **Must** be reported if employees pay premiums on a **pre-tax** basis (or employer pays premiums)
    - In this case, entire value of coverage must be reported
    - Even if otherwise exempt from ERISA as a "voluntary insurance arrangement"
    - And even if an "excepted benefit" under HIPAA

Temporary Exemptions

- Until further guidance is issued, the following types of coverage need **not** be reported (but also **may** be reported):
  - Coverage under a multiemployer plan
  - Coverage under any **self-insured** plan that is exempt from COBRA (such as a church plan)
  - Coverage under a Health Reimbursement Arrangement ("HRA")

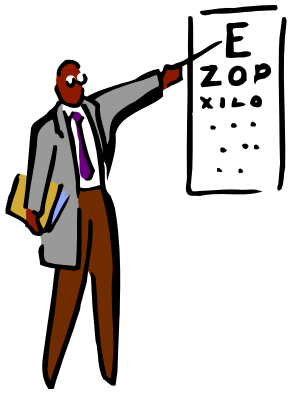
Dental or Vision Coverage

- Dental or vision coverage is exempt if an “excepted benefit” under HIPAA:



  - Offered under a separate policy, certificate, or contract of insurance

or



  - May be elected separately in return for an additional premium

- Subject to optional reporting

EAPs, Wellness, and Clinics

- Employee assistance plans, wellness programs, and on-site medical clinics:
  - Should **not** be reported if no "medical care" is provided
  - Examples of "medical care"
    - Counseling under EAP
    - Biometric screenings in wellness program

EAPs, Wellness, and Clinics

- EAPs, wellness programs, and on-site medical clinics:
  - **Must** be reported if:
    - Provide "medical care," **and**
    - Separate COBRA premium charged to continue such coverage
  - Temporarily exempt from reporting (but may be reported) if:
    - Provide "medical care," **but**
    - **No** separate COBRA premium charged to continue such coverage

Optional Reporting

- Employer may **choose** to report cost of temporarily exempt coverage if administratively easier to do so. However:
  - Coverage must be employer-sponsored, and
  - Cost must be calculated correctly
- Might give employees better idea of employer's actual health care costs (e.g., if cost of HRA, wellness program, EAP, or on-site clinic is included)

FSAs – Employee Contributions

- If only **employees** contribute to health flexible spending account (“FSA”), nothing should be reported on W-2

FSAs – Employer Contributions

- However, if an **employer** contributes to a health FSA (including via flex credits), some or all of those employer contributions may have to be reported
  - **Definitely** if employee's annual FSA amount exceeds employee's pre-tax contributions for **all** qualified cafeteria plan benefits
  - **Perhaps** if any employer contributions are specifically allocated to an FSA

Example One

- **Facts**: Employer A provides each employee with a flex credit of $1,000.
  - Employee X elects total qualified benefits of $3,000, contributing $2,000 of his own money.
  - He allocates $1,500 to a health FSA.
- **Result**: Because Employee X's own contribution ($2,000) exceeded his FSA amount ($1,500), none of the employer contribution should be reported on X's W-2.

Example Two

- **Facts**: Employer B also provides each employee with a flex credit of $1,000.
  - Employee Y elects total qualified benefits of $3,000, contributing $2,000 of his own money.
  - He allocates **$2,500** to a health FSA.
- **Result**: Because Employee Y's FSA amount ($2,500) exceeded his own contribution ($2,000), $500 of the employer contribution should be reported on Y's W-2.

Example Three

- Employer C makes a **matching** contribution to each employee's health FSA, equal to 100% of the first $700 the employee contributes to his or her own FSA.
  - Per Notice 2012-9, this $700 employer contribution must be reported, **regardless** of how much an employee contributes for other qualified benefits.
  - Apparently because this matching contribution was allocated directly to the FSA.

Example Four

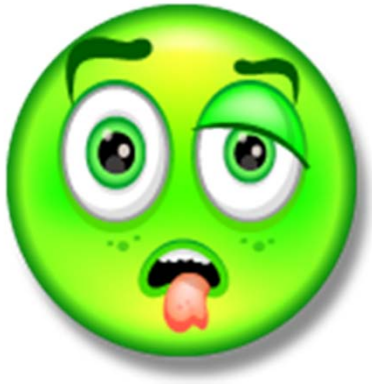
- Employer D makes a $200 contribution to the FSA account of any employee who completes a health risk assessment.
  - Under the logic of Example Three, this contribution should be reported on the employee's W-2.
  - Note: This result **might** be avoided if the employer simply gave each employee who completes a health risk assessment $200 in flex credits, to be used for **any** purpose under the cafeteria plan.

Non-Employees

- Need not report for anyone who would not otherwise receive a W-2
- Examples of such individuals (who might be health plan beneficiaries) include:
  - COBRA beneficiaries
  - Retirees
  - Non-employee directors
  - Independent contractors

Special Non-Reporting Rules

- Need not report on W-2 issued **during** the calendar year (at terminated employee's request)
- Third-party sick pay provider need not report the cost of any health coverage



  - However, if employer issues a W-2 during that same year, employer's W-2 must report the cost of any health coverage.

Valuation of Coverage

- Amount to be reported should reflect both employer **and** employee portions of cost
- **Annual** amount is equal to the sum of all **monthly** amounts
- All plans of the same employer (but **not** controlled group) must be aggregated

Insured Plans

- Value of insured coverage = Premium paid to insurer
- **Example:** Employer provides fully insured group medical coverage to employees
  - Insurer charges an annual premium of $7,500 for individual coverage
  - Employer pays 60% of the premium ($4,500) and employee pays 40% ($3,000)
  - Full premium amount of $7,500 must be reported on employee's W-2

Self-funded Plans

- Value of self-funded overage = COBRA "applicable premium" (**without** the 2% administrative charge)
- **Example:** Employer provides self-funded medical coverage
  - Actuary determines that applicable COBRA premium for employee-only coverage is $500 per month
  - Employer must report $6,000 ($500 x 12) for any employee who had employee-only coverage for the full year

Mid-Year Changes

- Valuation must take into account any mid-year election changes made by **employee**:
  - **Example**: Employee adds coverage for spouse in connection with marriage, or a child ages out of coverage
  - **Example**: Under **non-calendar year plan**, employee moves from PPO to high deductible health plan as of first day of plan year

Mid-Year Changes

- Valuation must also take into account any mid-year changes made by **employer**:
  - **Example**: Employer improves or curtails benefits during calendar year
  - **Example**: Employer raises COBRA rates during calendar year (because the 12-month COBRA "determination period" is not the calendar year)

Mid-Year Changes

- For convenience, may fix monthly value as of first day of each month, thereby disregarding any changes made during that month
- Nonetheless, will require careful tracking of monthly changes, with the ability to retain that data

Value Fixed as of December 31

- Annual value may be determined as of December 31 of reporting year
  - May disregard subsequent events, even if they affect the value of coverage received during reporting year
  - **Example:** Retroactive addition of coverage for newborn child
  - **Example:** Retroactive dropping of coverage on divorce

Plans Providing Mixed Coverage

- Options if single plan provides both health and non-health coverage:
  - **Report only value of health coverage**, using any reasonable allocation method
  - If non-health coverage is merely "incidental" to health coverage (e.g., medical plan with disability income benefit), may **report entire value**
  - If health coverage is merely "incidental" to non-health coverage (e.g., long-term care plan with small medical benefit), may **report nothing**

Special Valuation Rules

- Employee terminating during calendar year:
  - **Must** report value of coverage for period as an employee
  - **May** report value of coverage after termination of employment (e.g., COBRA or retiree coverage)
- Pay period overlapping calendar years may be reasonably (and consistently) allocated
  - between **both** calendar years, or
  - to **either** calendar year

Subsidized COBRA Premiums

- May use good faith estimates if employer subsidizes COBRA premiums
- **Example**: Employer A charges only $150 per month for single COBRA coverage
  - However, Employer A makes good-faith estimate that COBRA applicable premium for single coverage is $300 per month
  - Should report cost of single coverage for active employee as $300 per month

Composite Rates

- Special rules apply if employer charges active employees a “composite” rate
  - **Example:** All active employees pay same premium for either employee-only or employee-plus-spouse coverage. Plan also charges a composite COBRA premium for such coverage
  - Should use composite COBRA premium for employees having either employee-only or employee-plus-spouse coverage

Composite Rates

- If employer charges active employees a composite rate, but charges separate rates to COBRA beneficiaries, two reporting options:
  - Use separate COBRA rates, or
  - Calculate and use composite rate
- Thus, employer in prior Example could either
  - Report higher COBRA applicable premium for employee-plus-spouse coverage, or
  - Calculate and report composite “applicable premium”

Multiple Related Employers

- If an employee receives health coverage from multiple **related** employers during the same calendar year:
  - Any "common paymaster" **must** report the full cost of the coverage
  - If there is no common paymaster, employers may either
    - allocate the cost on a reasonable basis (e.g., months employed by each employer during the year), **or**
    - have a single employer report the full cost

Successor Employers

- If an employee receives health coverage from two **unrelated** employers, where one employer is a "successor" to the other employer:
  - Each employer must report its share of the total costs on its own W-2
  - However, if the successor employer issues a W-2 for entire year, that W-2 should reflect value of coverage provided by both employers

Future IRS Guidance

- IRS expects to issue further guidance on this topic
- However, any such guidance would be prospectively effective only
- And it would apply only to calendar years beginning at least six months after guidance is issued
- No further guidance will apply to 2012

Employer Action Steps

- Determine whether subject to reporting requirement
- Identify all coverages subject to reporting
- Determine how to value those coverages
- Verify that payroll systems will capture and retain the necessary data (including changes)
- Consider special employee communication, either with or in advance of the W-2s

What to Report

Type of Coverage	Yes	No	Optional
Medical or Prescription Drug Coverage	X		
Stand-Alone Dental or Vision Coverage			X
Other Dental or Vision Coverage	X		
Health Reimbursement Arrangement			X
Employee Health FSA Contributions		X	
Employer Health FSA Contributions allocated specifically to Health FSA	X		
Employer Health FSA Contributions to the extent Employee's FSA amount exceeds Employee's contributions for tax-free benefits	X		
Other Employer Health FSA Contributions		X	
Multiemployer Plans (collectively bargained)			X
Self-Funded Church Plan (COBRA Exempt)			X

What to Report

Type of Coverage	Yes	No	Optional
Health Savings Account Contribution[1]		X	
Archer Medical Savings Account Contribution[1]		X	
Hospital Indemnity Insurance or Coverage for Specified Illness – paid for by employee on after-tax basis		X	
Hospital Indemnity Insurance or Coverage for Specified Illness – paid for by employer or by employee on pre-tax basis	X		
Taxable Coverage for Domestic Partner or Child Over Age 27	X		
Indian Tribal Plan		X	
Third-Party Sick Pay Provider			X
[1] But report in Box 12 Using Code W			

What to Report

Type of Coverage	Yes	No	Optional
Employee Assistance Plan providing “medical care” (e.g., counseling) for which a COBRA premium is charged	X		
Employee Assistance Plan providing “medical care” for which no COBRA premium is charged			X
Employee Assistance Plan providing no “medical care”		X	
Wellness Program providing “medical care” (e.g., biometric screening) for which a COBRA premium is charged	X		
Wellness Program providing “medical care” for which no COBRA premium is charged			X
Wellness Program providing no “medical care”		X	

What to Report

Type of Coverage	Yes	No	Optional
On-Site Clinic providing "medical care" (e.g., by treating dependents) for which a COBRA premium is charged	X		
On-Site Clinic providing "medical care" for which no COBRA premium is charged			X
On-Site Clinic providing no "medical care"		X	
Taxable Income Attributable to Discriminatory Health Coverage [2]		X	
Taxable Income Attributable to S Corporation's Payment of Premiums on Behalf of 2% or Greater Shareholder [2]		X	
Employer Required to File Fewer Than 250 W-2s for Prior Calendar Year			X
[2] But report in Box 1			

What to Report

Type of Coverage	Yes	No	Optional
Governmental Plan (other than military)	X		
Governmental Plan (military)		X	
Long-Term Care Insurance		X	
Life Insurance		X	
Accidental Death & Dismemberment Insurance		X	
Disability Income Insurance		X	
Workers' Compensation Insurance		X	
W-2 Furnished During Calendar Year in Which Employee Terminates Employment (at Employee's Request)			X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