



HEALTH REFORM UPDATE

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This update was written by Maria Robles Meyers, Health Law Advisors, PLLC, for the sole use of members of Advantage Health Plans Trust. It is intended to be informational and does not constitute legal advice regarding any specific situation.

W-2 Reporting of Health Care

The purpose for this memo is to help you determine if you will be required to add “informational” data to the W-2 for your employees for the 2012 calendar year with respect to the group health plan you offer your employees, and if so, what you will need.

Who Must Add Data to the W-2?

First, if you are an employer that files *less than 250 W-2's at the end of 2011*, you will not be required to report the cost of health care on the W-2 provided for employees for the 2012 calendar year. If you want to, you can choose to report the data voluntarily. Currently, the rules will apply in 2013. However, it appears that the IRS may delay the reporting even beyond 2013. Further information will be provided as it becomes available.

Second, if you are an employer that files *250 or more W-2's at the end of 2011 - you will be required* to report the cost of health care for your employees. It is important that you plan now so that the data can be accumulated in your payroll system during 2012. Note that the number of W-2s filed determines whether or not you must comply. It does not matter if the number of employees covered under your plan is less than 250.

What Information Must Be Added to the W-2?

The data to be reported on the W-2 is the cost of health care for each employee for the year. Not what the employee pays for the coverage, but the total cost including the portion subsidized by the employer. The IRS indicates that this is strictly to inform the employee of the “real” cost of his health care. The data is for informational purposes only and is not in any manner taxable to the employee.

In Notice 2011-28, the IRS outlined the data to be used for the reporting. The amount will be the “aggregate cost” for the year. This means that changes made *during* the year that impact the cost of the health care will need to be accumulated to report the cost properly. The IRS has indicated that the amount reported *must* reflect any changes made during the year. For example, an employee who had employee-only coverage who adds a spouse during the year would have a different “cost” during the period he was employee only than during the period that he had coverage for himself and a spouse. Thus the need to accumulate data during the year.

The “aggregate cost” for the year is reported on the W-2 Box 12 coded “DD.” The amount that you will need to report on the W-2 is the total cost for the coverage for each employee for each month. The IRS Notice indicates that you do not need to include the cost of vision or dental benefits if these are separate plans not integrated into the health plan.

Penalties

Why should you comply? In addition to the criminal penalty provided by Section 7204 of the Code, the penalty imposed for the willful failure to file the applicable data is *\$50 per failure* (for each W-2 that omits the required disclosure). It is not clear yet how strenuous the enforcement will be.

Summary

As you can see, it is important to plan for the reporting so that there are no surprises at year end. You will need to track the total cost of health coverage the employee has each month, and ensure that the total is accumulated and included on the W-2 delivered in January, 2013.