

Under the Affordable Care Act, employers are required to include the cost of employer-provided group health plan coverage on an employee's Form W-2. In general, this consists of employer-sponsored coverage under a group health plan that is excludable from the employee's gross income. This provision is optional for 2011 (reported on the January 2012 W-2), but is mandatory for 2012 (the first W-2 it will truly affect is the January 2013 W-2). The purpose of the reporting requirement is to provide employees with comparable consumer information on the cost of their health care coverage; the guidance clarifies once again that the amounts reported are not taxable.

The IRS previously issued interim guidance in 2011 that provided information on the nuts and bolts of the reporting, as well as transitional relief for small employers. The IRS has now released additional interim guidance which amends and restates the prior interim guidance. Much of the original guidance remains intact, but this new guidance supersedes the earlier guidance and provides additional clarification, as well as a number of changes. The highlights of the guidance are set forth below.

Exception for Small Employers and New Exception for Tribally Chartered Corporations

The guidance clarifies that the transition relief for small employers, which allows employers who file fewer than 250 Forms W-2 in the preceding calendar year to be exempt from the reporting requirement, will continue unless and until further guidance is issued. It also adds to the transition relief an exception from the reporting requirement for employers that are tribally chartered corporations wholly-owned by a federally recognized Indian tribal government.

Health FSA, Dental and Vision Plans Not Reportable

The guidance clarifies that a health FSA funded only by employee salary reduction elections is not subject to the W-2 reporting requirement, unless the amount in the health FSA for the plan year exceeds the employee's salary reduction election for the plan year (which typically happens when employers provide flex credits through a cafeteria plan that are used to seed the health FSA).



The prior interim guidance provided that an employer did not have to report dental and vision coverage if the coverage is not "integrated" into the group health plan, but did not define the term "integrated." The new guidance explains that an employer does not have to report coverage under a dental and/or vision plan if those benefits are excepted benefits under HIPAA. To be excepted benefits, they must either be offered under a separate policy, certificate or contract of insurance, or the participant must have the right not to elect the dental or vision benefits and, if they do, they must pay additional premium or contribution for that coverage.

EAPs, Wellness Programs and Onsite Medical Clinics

Coverage provided under these types of programs would only be required to be included in the W-2 reporting if the coverage is considered a group health plan. EAPs are a little tricky because they can include a variety of benefits from marital assistance to concierge services. If the EAP provides medical benefits, such as counseling by a trained professional, it would be subject to the W-2 reporting requirement. The guidance creates an exception from the reporting when an employer does not charge a COBRA premium for these types of coverage to COBRA qualified beneficiaries. If the employer does charge a COBRA premium, it must include the cost of the programs in the W-2 reporting.