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*Creative Health Benefits Solutions for Today, Strong Policy for Tomorrow*

July 18, 2011

*Submitted via e-mail: [Notice.comments@irscounsel.treas.gov](mailto:Notice.comments@irscounsel.treas.gov)*

The Honorable Douglas H. Shulman  
Commissioner of Internal Revenue  
Internal Revenue Service  
CC:PA:LPD:RU (Notice 2011-28)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

**Re: Notice 2011-28 – Interim Guidance on Informational Reporting to  
Employees of the Cost of Their Group Health Insurance Coverage**

Dear Commissioner Shulman:

The National Business Group on Health is pleased to comment on the Internal Revenue Service's Interim Guidance on Informational Reporting to Employees of the Cost of Their Group Health Insurance Coverage.

The National Business Group on Health represents approximately 330 primarily large employers, including 64 of the Fortune 100, who voluntarily provide health benefits and other health programs to over 50 million American employees, retirees, and their families. Our members employ and provide health benefits for employees under a wide variety of work arrangements, including full-time, part-time, seasonal, and temporary. In addition, our members often operate multiple lines of business and tailor employee work and benefit arrangements to the specific needs of each line of business.

As our members prepare for implementation of the Form W-2 reporting requirement under the Patient Protection and Affordable Care Act (Affordable Care Act), a primary concern will be minimizing the administrative and cost burdens associated with Affordable Care Act requirements. Allowing plan sponsors flexibility to adapt their Affordable Care Act compliance procedures to existing benefit and payroll arrangements will reduce these burdens and allow plan sponsors to devote more resources toward maintaining and improving health benefits for their employees. Therefore, the National Business Group on Health welcomes the Service's efforts to address employers'

challenges and reduce the burden of compliance with § 6051(a)(14) of the Internal Revenue Code (Code). **Specifically, the National Business Group on Health supports:**

- (1) Requiring that employers report only the cost of coverage currently included in premiums charged for COBRA continuation coverage;**
- (2) Allowing employers flexibility in correcting errors related to the cost of employer-sponsored health coverage on Forms W-2; and**
- (3) Allowing employers an additional year of relief from complying with Code § 6051(a)(14).**

We provide further discussion of these recommendations below.

### **I. Cost of Applicable Employer-Sponsored Coverage**

The National Business Group on Health supports the Affordable Care Act's purpose of providing useful and comparable consumer information to employees on the cost of their health coverage. However, reporting the cost of applicable employer-sponsored coverage, as currently described in Notice 2011-28, will likely involve substantial administrative burdens and reprogramming of employers' payroll and recordkeeping systems.

As an initial matter, employers may not maintain individualized cost information for certain health services that would be considered "applicable employer-sponsored coverage." Employers would benefit from guidance as to how costs of these services should be reported on Forms W-2. For example, many National Business Group on Health members provide wellness programs that supplement major medical coverage under a group health plan. These wellness programs may offer a variety of benefits such as counseling, disease management programs, or exercise facilities. However, these programs may not be available to all employee populations, and where these programs are available, not all employees will use wellness program benefits. Thus, while our members may be able to determine the cost of their wellness programs on a company-wide basis, it is not clear how employers should report the cost of wellness programs on a per-participant basis. These same concerns apply to our members who provide on-site medical clinics that supplement major medical coverage. These clinics may provide a variety of services such as first aid, pharmacy services, or preventive health screenings. Again, employers may be able to determine the cost of these clinics on an aggregate basis but will need guidance as to how these costs should be allocated among plan participants (who may or may not use these clinics) for Form W-2 purposes.

Furthermore, because of the difficulties in determining per-participant cost described above, some employers may not currently include the cost of benefits such as wellness programs or on-site medical clinics in the premiums they charge for COBRA continuation coverage. These employers will not be able to use the current COBRA

premium as the cost of applicable employer-sponsored coverage for purposes of Form W-2 reporting of the excluded benefits.

Finally, many of our members will face significant administrative and cost burdens if they are required to track, on a per-participant basis, (a) changes in the cost of health coverage during a calendar year, particularly if the plan year is not the calendar year, or (b) changes in cost associated with status changes (such as switching from employee-only to family coverage due to a qualifying event or working for multiple related employers in a single calendar year). Currently, many employers' recordkeeping and payroll systems are not designed to track such cost changes on an individual basis, and we believe that the additional costs associated with modifying these systems would outweigh the benefit to participants of receiving this information.

For the reasons described above, the National Business Group on Health recommends:

- That the Service provide additional guidance on the method for reporting the cost of group health plan benefits that supplement major medical benefits (such as wellness programs and on-site health centers);
- That employers not be required to report on Forms W-2 the cost of benefits that supplement major medical benefits, provided the cost of such supplemental benefits – on an employer-wide basis – does not exceed 10% of the total cost of applicable employer-sponsored coverage;
- That until additional guidance becomes available, employers be required to report on Forms W-2 only the cost of coverage currently included in premiums charged for COBRA continuation coverage; and
- That employers be required only to report the cost of coverage as of a fixed date (e.g., January 1) each calendar year.

## **II. Correcting Errors in Reported Cost of Applicable Employer-Sponsored Coverage**

As noted above, the National Business Group on Health supports the goal of providing useful and comparable consumer information to employees on the cost of their health coverage. As a best practice, most (if not all of) our members and many other large employers already provide their employees, on an annual basis, a total compensation worksheet that includes the employer's estimated or actual per capita costs for health and other benefits available to employees. Our members are already making substantial efforts to comply with the Form W-2 reporting requirement under Code § 6051(a)(14). However, many of our members are concerned that because of the uncertainty involved in reporting costs of certain benefits (described above), they will face penalties, under Code § 6721 and § 6722, for incorrect W-2 reporting of the costs of applicable employer-sponsored coverage. Some of our members' concerns include:

- Incorrect reporting due to inadvertent errors in calculating the per-participant costs of benefits such as wellness programs, executive physicals, and on-site medical clinics;
- The costs and administrative burdens of correcting these Form W-2 errors; and
- Potential confusion for plan participants if they are issued multiple Forms W-2 to correct these errors.

The National Business Group on Health believes that imposing Code § 6721 and § 6722 penalties for such inadvertent errors and requiring distribution of corrected Forms W-2 would not further the Affordable Care Act's purposes, especially given that this reporting requirement is informational only and will not affect the amount includable in income. However, such penalties and correction requirements could substantially increase administrative costs for group health plans, thereby diminishing resources available for maintaining and improving health benefits for employees. For these reasons, the National Business Group on Health recommends:

- Eliminating or reducing Code § 6721 and § 6722 penalties associated with the requirements of Code § 6051(a)(14).
- Allowing employers flexibility in correcting errors in the reported cost of applicable employer-sponsored coverage. For example:
  - Allowing employers an alternative correction method for Form W-2 errors associated with Code § 6051(a)(14) such as providing written notice to employees on an annual basis regarding corrections, if any, to the cost of coverage.
  - Allowing employers an exemption from current correction requirements and Code § 6721 and § 6722 penalties in the case of *de minimis* errors in reporting the cost of coverage.

### **III. Transition Relief**

*Employers should be allowed an additional year of relief from complying with Code § 6051(a)(14).*

As discussed above, reporting the cost of applicable employer-sponsored coverage on Forms W-2 will likely involve substantial reprogramming of payroll and recordkeeping systems, especially if employers are required to report the cost of health services that are not included in current calculations of the cost of COBRA continuation coverage. In addition, employers would benefit from additional guidance on the method for reporting the cost of group health plan benefits that supplement major medical benefits. Therefore, we recommend allowing, at minimum, an additional one-year transition relief period

before requiring employers to comply with Code § 6051(a)(14). This additional transition relief would allow employers time to take into account any future guidance on Form W-2 reporting. Allowing additional time to implement the Form W-2 reporting requirement would also reduce reporting errors, thereby reducing the need for future corrections.

Again, thank you for considering our comments and recommendations on the informational reporting requirement under § 6051(a)(14) of the Internal Revenue Code. Please contact me or Steven Wojcik, the National Business Group on Health's Vice President of Public Policy, at (202) 558-3012 if you would like to discuss our comments in more detail.

Sincerely,

A handwritten signature in cursive script that reads "Helen Darling".

Helen Darling  
President