



May 15, 2015

CC:PA:LPD:PR (Notice 2015-16)
Room 5206
Internal Revenue Service
PO Box 7604
Ben Franklin Station, Washington DC 20044

Re: Comments to Notice 2015-16 regarding Excise Tax on High Cost Employer-Sponsored Health Coverage

AARP appreciates the opportunity to submit comments on Notice 2015-16 regarding the excise tax on high cost employer sponsored health coverage as the Department of Treasury (Treasury) and Internal Revenue Service (IRS) develop proposed regulations on this issue. AARP is a nonprofit, nonpartisan organization, with a membership of nearly 38 million Americans age 50 and older, that helps people turn their goals and dreams into real possibilities, strengthens communities and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse.

Section 49801 of the Internal Revenue Code (IRC), as enacted by the Affordable Care Act (ACA), imposes a 40 percent excise tax on employer sponsored health plans that exceed certain thresholds beginning in 2018. AARP shares the concerns underlying this provision about unsustainable growth in health care costs and supports reasonable strategies to slow increases in health care spending that do not compromise quality of care or access to necessary services. AARP is also supportive of efforts to make the tax system more equitable. However, a major priority for AARP is to ensure the health security of millions of older Americans. Employer-sponsored health coverage continues to be the backbone of America's health insurance coverage for individuals under age 65. In addition, employer sponsored retiree health coverage is an important source of health coverage for retirees both eligible and not yet eligible for Medicare.

AARP urges IRS to be vigilant in its efforts to ensure that implementation of this provision does not put an unnecessary burden on groups who face higher premiums for reasons including their age, health status, or geography. It is critical to recognize that, in some circumstances, the high cost of a health plan may result from important factors unrelated to the package of benefits, such as the higher health care needs of older workers and retirees, and geographic variation in health care costs and population age.

AARP believes it is critical the excise tax provision be implemented in a manner that does not unfairly penalize employers that employ older workers, or penalize employers that have made the decision to offer their retirees health coverage. By

2018, the excise tax provision will begin to have a significant impact on health coverage provided to many Americans through their employers, and it is estimated to impact the coverage of a growing number of individuals and plans in subsequent years. As IRS develops proposed regulations, we urge you to keep in mind the fundamental purpose behind the Affordable Care Act -- providing and maintaining affordable and appropriate levels of health coverage -- and avoid unintended consequences that could discourage employers from hiring and retaining older workers, or offering and maintaining retiree health coverage.

In addition, as the excise tax provision encourages more employers to reduce health coverage benefits and shift greater financial responsibility for the cost of health coverage onto employees, it is critical that implementation of these provisions be closely monitored and evaluated in the context of their impact on the affordability of health coverage for employees.

Dollar Limit Adjustments:

Section 49801(b)(3) of the IRC specifies two separate dollar limit thresholds for 2018 (\$10,200 for self-only coverage and \$27,500 for family coverage) and provides for adjustments to these thresholds in specific circumstances. We support the use of adjustments to the thresholds to take into account employer and workforce characteristics which could have an impact on the imposition of the excise tax, such as age and retiree coverage. However, we have some comments regarding the implementation of the specific adjustments, as follows.

Age and Gender Adjustments:

The law provides that dollar limit thresholds may be increased by an adjustment amount if the age and gender characteristics of an employer's workforce are different from those of the national workforce. We believe the manner in which these adjustments are calculated is critical; however, there is currently little information available about how this important calculation would be made. Section 49801(b)(3)(C)(iii) of the IRC, as added by the ACA, requires such adjustments be calculated relative to the premium cost of the Blue Cross Blue Shield standard benefit option under the Federal Employees Health Benefits Plan as priced for the age and gender characteristics of the employer's workforce. Guidance has not yet been provided about how this calculation will be required. In addition to questions about this calculation itself, we are also concerned by analyses which suggest the adjustment mechanism envisioned in the statute may be insufficient to take into account geographic considerations for high-cost areas.

We urge you to ensure that the age and gender adjustments be crafted in such a way that employers with older workforces are not disproportionately subject to the tax and that the adjustments adequately account for employers' variation in health costs attributable to age, gender characteristics and geographic variation in health costs. We also encourage you to ensure that this mechanism is as

administratively simple as possible for use by employers in calculating and making the adjustment.

Adjustments for Qualified Retirees

Recent trends demonstrate that the number of employers offering retiree health coverage is shrinking, and employers that continue to provide coverage have been shifting greater costs onto retirees in the form of increased premiums, higher cost-sharing, and reduced benefits. Despite this, employer sponsored retiree coverage remains an important source of health coverage for older Americans not yet eligible for Medicare. Retiree health benefits are generally not pre-funded by employers, yet they have been promised to retirees in their working years as a form of deferred compensation.

The proposed regulation must avoid encouraging further erosion of such important health coverage. While Section 49801(b)(3)(C)(iv) of the IRC, as added by the ACA, specifies that coverage for qualified retirees ages 55-64 will be subject to a specified adjusted threshold of \$11,850 for single coverage and \$30,950 for family coverage, we are concerned these specified dollar limits may be insufficient to achieve their stated purpose. We also have reservations, similar to concerns about the age and gender adjustments discussed earlier, that this adjustment may not fully take into account geographic considerations for high cost areas. We urge you to make further refinements to ensure the adjustment mechanism be applied in a manner that does not discourage employers from offering or maintaining retiree health coverage.

Definition of Applicable Employer-Sponsored Coverage:

The ACA specifies certain types of coverage will be considered applicable coverage for purposes of counting towards the excise tax dollar limit thresholds. These types of coverage include: Health Flexible Spending Accounts; Archer Medical Savings Accounts; Health Savings Accounts; governmental plans; coverage for on-site medical clinics; retiree coverage; multiemployer plans; and certain fixed indemnity insurance. The ACA also specifies certain categories of benefits that are excluded from applicable coverage. However, there are several categories of employer benefits that are not specified in the law and we urge IRS to clarify in proposed regulations whether these benefits should be considered applicable coverage.

On-site medical clinics: The Notice states that Treasury and IRS anticipate that proposed regulations will provide that the requirement to include coverage for on-site medical clinics in the definition of applicable coverage does not include on-site medical clinics that offer only de minimis medical care to employees, such as those that provide first aid during working hours. We support this exclusion. In addition, Treasury and IRS seek comment on whether the exclusion should be expanded to include additional services provided at on-site medical clinics such as immunizations, allergy injections,

provision of non-prescription pain relievers, and treatment of workplace injuries. We support such an expansion of this exclusion, and agree that the provision of these types of minor medical services should not be counted towards the dollar limit thresholds.

Self-insured dental and vision: We encourage you to clarify that self-insured limited scope dental and vision coverage (that qualifies as an ACA excepted benefit) is excluded from being considered applicable coverage. This clarification would be consistent with the law's requirement that stand-alone vision and dental coverage be excluded from applicable coverage.

Employee assistance programs: We also support the exclusion of employee assistance programs (EAPs) from the definition of applicable coverage as we believe them to be of important value to employees.

Thank you for the opportunity to comment on the Notice. We understand that the Department of Treasury and IRS intend to issue an additional Notice and that proposed regulations will be issued in the future for further public notice and comment. If you have any questions about these comments, please feel free to contact Andrew Schwab on our Government Affairs staff at (202) 434-3778.

Sincerely,

A handwritten signature in black ink, appearing to read "David Certner", with a stylized flourish at the end.

David Certner
Legislative Counsel and Policy Director
Government Affairs