



AMERICAN COLLEGE OF
OCCUPATIONAL AND
ENVIRONMENTAL MEDICINE

May 15, 2015

CC: PA: LPD: PR (Notice 2015-16),
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Notice 2015-16

To Whom It May Concern:

I am writing on behalf of the American College of Occupational and Environmental Medicine (ACOEM) to provide comments on IRS Notice 2015-16, *Excise Tax on High Cost Employer-Sponsored Health Coverage*.

ACOEM, an organization of more than 4,000 occupational physicians and other health care professionals, provides leadership to promote optimal health and safety of workers, workplaces, and environments.

As the medical society devoted to promoting the health of workers, we believe strongly in the efficacy of the workplace as a critical location for reducing healthcare costs and improving worker health. For many workers, an on-site medical clinic is the source for preventive and primary health care.

These comments respond to Treasury and IRS' request for comments on an exception for on-site clinics. At a later date, we will provide comments in support of excluding worksite wellness and disease management programs from the excise tax. We will also be seeking a clarification that occupational medicine services are excluded from applicable coverage. The services include medical surveillance testing which may be dictated by federal regulations, or for exposure to other substances or infectious diseases not covered by a specific federal standard.

On-Site Medical Clinics

Section 4980I(d)(1)(B)(i) excludes from the definition of applicable coverage each of the excepted benefits listed in § 9832(c)(1), other than the § 9832(c)(1)(G) exception for on-site medical clinics. Accordingly, coverage provided through an on-site medical clinic generally is applicable coverage. Treasury and IRS, however, anticipate that the forthcoming proposed regulations will provide that applicable coverage does not include on-site medical clinics that offer only *de minimis* medical care to employees.

It is ACOEM's position that *de minimis* medical care to employees should include on-site clinical services currently exempted under regulations and guidance issued by the IRS for individuals contributing to Health Savings Accounts (HSA) and participating in a High Deductible Health Plan (HDHP).

This would include preventive care benefits enumerated in the safe harbor for preventive care benefits allowed to be provided by a high deductible health plan¹. IRS Notice 2004-23 provides that preventive care for purposes of section 223(c)(2)(C) includes, but is not limited to, the following:

- Periodic health evaluations, including tests and diagnostic procedures ordered in connection with routine examinations, such as annual physicals.
- Routine prenatal and well-child care.
- Child and adult immunizations.
- Tobacco cessation programs.
- Obesity weight-loss programs.
- Screening services recommended by the U.S. Preventive Services Task Force.²

De minimis services excluded from the excise tax should also be consistent with the guidance provided in IRS Notice 2008-59.³ This guidance allows that access to free or low-cost health care at an on-site clinic will not adversely affect HSA eligibility as long as the facility does not provide "significant medical care" for less than fair market value. IRS Notice 2008-59 provides a safe harbor enumerating certain coverage that will not affect HSA eligibility. The safe harbor example describes an on-site health facility that provides physicals, immunizations, allergy injections and nonprescription pain relievers, as well as evaluations and/or treatment for injuries and illnesses caused by accidents or conditions while on the job.

Further, *de minimis* services excluded from the excise tax should also include occupational medicine services provided at the on-site clinic. Such services include, but are not limited to, first aid, medical surveillance examinations to determine workplace exposures to toxic and infectious agents, and core services needed for protecting workers.

In addition to the above comments, we feel strongly that Treasury and IRS need to give consideration to excluding from applicable coverage on-site primary care medical services provided at a worksite located in either a primary care Health Profession Shortage Area (HPSA) or Medically Underserved Area as designated by the Health Resources and Services Administration. In many instances, the workplace may be the primary source of medical care for workers.

¹ IRS Notice 2004-23

² <http://www.uspreventiveservicestaskforce.org/Page/Name/uspstf-a-and-b-recommendations>

³ IRS Notice 2008-59

Notice 2015-16

May 15, 2015

Page 3

Employee Assistance Programs (EAPs)

ACOEM agrees that the Treasury and IRS should exercise authority under section 49801(g) to propose that EAPs that qualify as an excepted benefit pursuant to recently issued regulations under section 9831 would be excluded from applicable coverage for purposes of section 49801.

Thank you for your consideration of these comments. Please contact Patrick O'Connor, ACOEM's Director of Government Affairs, if you have additional questions or need additional information. He can be reached at 202-223-6222 or by email at patoconnor@kentoconnor.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Roberts", written in a cursive style.

Mark A. Roberts, MD, PhD, MPH, FACOEM
President