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Sent electronically to: Notice.comments@irs.counsel.treas.gov

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

RE: Proposed Regulations - Section 49801 — Excise Tax on High Cost Employer-Sponsored Health Coverage

UChicago Argonne, LLC ("Argonne National Laboratory") respectfully submits this written communication to the Internal Revenue Service in response to its Public Notice requesting comment on the Proposed Regulations on the Excise Tax on High Cost Employer-Sponsored Health Coverage.

Argonne strongly urges the Commission to exempt from inclusion in the types of health coverage subject to Section 4980I(d)(1)(A) any wellness programs created in fulfillment of federal regulations that require government contractors to provide occupational medicine programs to prevent and management morbidity in worker health and productivity.

The National Laboratories

Argonne National Laboratory is one of 17 Department of Energy ("DOE") Laboratories that comprise a preeminent federal research system to provide the United States with strategic scientific and technological capabilities. The National Laboratories are government owned but privately operated with Department of Energy funds. The Laboratories are subject to strict employee safety and health regulation. These regulations, found at 10 CFR 851, mandate occupational health services including voluntary worker wellness programs that may otherwise fall within the scope of an on-site medical clinic taxed by Section 4890I. As explained below, this will result in taxation of medical clinic services that are federally mandated and are paid with federal funds.

Section 4980I and On-Site Clinics

Section 4980I(a) imposes a 40% excise tax on any “excess benefit” provided to an employee. Section 4980I(b) provides that an excess benefit is the excess, if any, of the aggregate cost of the “applicable coverage” of the employee for the month over the applicable dollar limit for the employee for the month. The proposed regulations currently include coverage for on-site medical clinics within the definition of applicable coverage subject to the excise tax. (Section 4980I(d)(1)(B)(i)). There is a potential exclusion of on-site medical clinics that provide only *de minimis* medical care (§ 9832(c)(1)(G)), for reasons including that this “avoids the burden of calculating the incremental additional cost of coverage that would be provided under such an arrangement, which most employees likely would not consider part of their health coverage.” (proposed regulations page 8 citing JCT Report, at 62). The proposed regulations solicit comments on how the Treasury and IRS should treat medical care in the case of on-site medical clinics, and on how to determine the cost of coverage provided by an on-site medical clinic that is applicable coverage.

Argonne National Laboratory submits that the care provided by on-site medical clinics mandated by federal regulations should not be treated as applicable coverage under Section 4980I(a), and further should not be included in the cost of coverage provided by an on-site medical clinic that is applicable coverage.

10 CFR 851, Worker Safety and Health Program

Federal regulations require DOE Contractors to provide occupational medical service to workers employed at covered DOE worksites, including the National Laboratories. 10 CFR 851, Worker Safety and Health Program, Appendix A, Section 8. These mandated requirements include:

(j) The occupational medicine provider must include measures to identify and manage the principal preventable causes of premature morbidity and mortality affecting worker health and productivity.

(1) The contractor must include programs to prevent and manage these causes of morbidity when evaluations demonstrate their cost effectiveness.

(2) Contractors must make available to the occupational medicine provider appropriate access to information from health, disability, and other insurance plans (de-identified as necessary) in order to facilitate this process.

(k) The occupational medicine services provider must review and approve the medical and behavioral aspects of employee counseling and health promotional programs, including the following types:

(1) Contractor-sponsored or contractor supported EAPs;

- (2) Contractor-sponsored or contractor supported alcohol and other substance abuse rehabilitation programs; and
- (3) Contractor-sponsored or contractor supported wellness programs.
- (4) The occupational medicine services provider must review the medical aspects of immunization programs, blood-borne pathogens programs, and bio-hazardous waste programs to evaluate their conformance to applicable guidelines.

The National Laboratories have developed a wide range of programs to prevent and manage the premature morbidity and mortality affecting worker health and productivity, under the purview of Appendix A, Sections 8(j) and (k). These include offering services to alleviate lost work time including voluntary annual preventative health physicals, onsite physical therapy for personal conditions, acute personal care, health care coaching for tobacco cessation and asthma management, disease management programs for weight loss and blood pressure control, and a flu vaccination program.

These voluntary wellness programs are an economically advantageous use of federal funds. National Laboratories must already equip and staff extensive medical clinics in order to provide the mandated occupational services required by 10 CFR Section 851. The wellness programs promulgated under Appendix A, Section 8(j) and (k) make use of the existing clinics including medical staff already employed by federal contractors to provide additional services to improve worker health and address health issues that result in lost time from work and premature retirement or death. However, without further exemption in the proposed regulations, these services will be included in the calculation of the excise tax under Section 49801 because the programs extend beyond workplace injuries, fitness for duty examinations, and the limited scope of *de minimis* health care encompassed in Section 9832(c)(1)(G).

Full time employees at National Laboratories are extended Affordable Care Act compliant health care wholly separate from the wellness services provided at these onsite clinics, and most employees likely would not consider these services to be part of their health coverage. Including the costs of these programs that are driven by a federal mandate in the calculation of the excise tax would be a poor use of federal tax payer money. In order to stay within the scope of their federal funding, the programs provided by DOE funded on-site clinics are carefully scripted to provide health services that improve worker health and decrease lost work time. Taxation of these federally funded wellness programs could even force National Laboratories and other contractors to cut back on effective programs in order to mitigate the impact of these programs on excise taxes. This would undermine the basic intent of 10 CFR Section 851 that contractors “include programs to prevent and manage the causes of morbidity when evaluations demonstrate their cost effectiveness.” (10 CFR Section 851 Appendix A Section 8(j)(1)).

Conclusion

Argonne National Laboratory appreciates this opportunity to comment on the Proposed Regulations on the Excise Tax on High Cost Employer-Sponsored Health Coverage. We

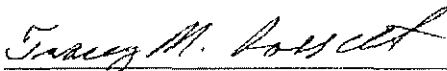
believe that considerations of the economical use of federal funds to provide the health services mandated by 10 CFR 851 weighs against the inclusion of any services provided under those regulations being taxed as high cost employer-sponsored health care coverage under Section 4890I(a). Thus, Argonne National Laboratory submits that the care provided by on-site medical clinics mandated by federal regulations should not be treated as applicable coverage under Section 4980I(a), and further should not be included in the cost of coverage provided by an on-site medical clinic that is applicable coverage.

Argonne National Laboratory is further a member of the National Association of Worksite Health Centers (NAWHC) and joins in the comments and recommendations submitted by NAWHC related to the implementation of the excise tax. Argonne National Laboratory would be pleased to talk or meet with anyone on the topic of onsite clinics and their value.

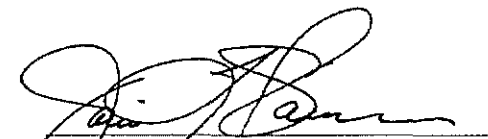
Sincerely,



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Deputy Laboratory Director for Operations /
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Tracey M. Rossett
Director, Human Resources


Jamie L. Stalker, MD
Director, Medical Division