

*Notice 2015-16*



**Cerner**

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May 14, 2015

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Submitted electronically via: [Notice.comments@irs.counsel.treas.gov](mailto:Notice.comments@irs.counsel.treas.gov)

CC:PA:LPD:PR (Notice 2015-16)  
Room 5203  
Internal Revenue Service  
PO Box 4704  
Ben Franklin Station  
Washington, DC 20044

Re: Notice 2015-16: Section 4980I - Excise Tax on High Cost Employer Sponsored Health Coverage

Dear Sir or Madam:

Cerner Corporation (Cerner) welcomes the opportunity to respond to the Internal Revenue Service's (IRS) invitation to comment on the Excise Tax on High Cost Employer Sponsored Health Coverage under §4980I of the Internal Revenue Code.

Cerner has a dual interest in providing comments. First, as an employer with over 30,000 members on its health plan, Cerner has a commitment to its associates to continue to offer affordable and comprehensive health benefits. Second, as a health care company, our mission is to contribute to the systemic improvement of health care delivery and the health of communities. As part of this mission, our employer services team provides employers with an array of population health services including onsite medical clinics to manage the health and wellness of employees. The provisions within § 4980I have broad reaching negative effects on the availability and use of benefits including Onsite Health Clinics, Health Reimbursement Accounts (HRA)s, Flexible Spending Accounts (FSAs) and Health Savings Accounts (HSAs) to significant businesses and industries. The overall policies of limiting the proliferation of these types of benefits is counter to the overarching goals of the Affordable Care Act (ACA) to reduce healthcare costs and improve quality.

Our response urges the IRS to review our comments regarding the following 3 specific recommendations:

1. Exclude from the definition of applicable coverage the cost of onsite clinics to the maximum extent possible, which includes any medical services provided by an on-site clinic to be classified as "de minimis".
2. Exclude from the definition of applicable coverage, contributions to tax-favored reimbursement accounts.
3. Provide flexibility in the use of the accepted COBRA methodology.

**1. The expected impact of including onsite medical clinics in the value of applicable coverage.**

Cerner respectfully disagrees with the IRS proposal to tax onsite health clinics that are not classified as "de minimis". Using the COBRA regulations as the benchmark definition of "de minimis" care, this includes onsite medical clinics that primarily provide occupation-related first aid, is available only to current associates and does not charge associates a premium or fee for use of the center. Cerner argues that the distinction between "de minimis medical services" and "significant benefits in the nature of medical care treatment" requires a high degree of interpretation, thereby creating an administrative burden for employers as well as subjecting them to significant financial risk if their interpretation is incorrect. Cerner's employer clients could experience a cumbersome burden of validating the definition of



their onsite clinics, contradicting the significant financial benefits of providing onsite clinics to their employees.

The ACA actively promotes alternative delivery models for care, and Cerner's onsite medical clinics have long been established as a successful alternative to the status quo that achieves the goal of efficient care delivery and is in alignment with the goals of ACA to 1) lower health care spend (2) increase access to care and (3) to improve the overall health of the population. Employer sponsored onsite medical clinics provide employees a highly effective access point to seek medical treatment early for primary and preventative care, provides an opportunity to manage chronic conditions in an efficient manner, improves medication and treatment adherence and leads to a decrease in expensive emergency room care, as well as other less optimal venues of care. Cerner encourages the IRS to exclude from the definition of applicable coverage the cost of onsite clinics to the maximum extent possible which includes any medical services provided by an on-site clinic to be classified as "de minimis".

Cerner also respectfully requests consideration, if the onsite medical clinics are included, for how value is determined. From a valuation perspective, there should be no difference between an onsite health clinic and an offsite community provider. Making this distinction for onsite medical clinics unduly punishes employers who provide efficient and impactful medical care through onsite medical clinics and impact the health and productivity of their workforce.

Besides raising revenue, one of the goals of the Excise Tax on High Cost Employer Sponsored Health Coverage is to reduce health care spending. While this is an admirable goal, not all employer plans are created equal. Basing the tax on the value of the health plan, and including onsite medical clinics in that value, penalizes employers who are already making strides in changing the health of their population by focusing on how care is delivered. Employers, such as Cerner, who sponsor onsite medical centers, not only provide quality health care but also improve worker productivity. This combination has a far more positive economic impact to the overall economy than just reducing health care spending by encouraging innovation in medical quality and outcomes. As a leading provider of on-site medical clinics to a variety of workforces throughout the country, we believe that innovation in care delivery should be actively promoted, and not de-incented, in order to achieve the principle goals of the ACA.

**2. *The expected impact of including employer and employee pre-tax contributions to Health Savings Account, Flexible Spending Accounts and employer contributions to Health Reimbursement Accounts to the value of a Health Plan.***

§4908I of the ACA has the potential to have the greatest negative effective on the growth of Consumer Driven Health Plans (CDHPs) and tax-favored reimbursement accounts. Cerner moved to full-replacement CDHP in 2007. Integrated with our CDHP is an HRA. Cerner makes a like-deposit for all enrolled subscribers into an HRA. The HRA can be used to offset health plan expenses, such as deductibles and cost-share. It can also be used for other qualified expenses, such as vision and dental. Unused dollars can roll over from year-to-year. A component of offering CDHP is the incentive-based nature. Cerner, like many employers, provides incentives for associates and their families to participate in programming that promotes better health outcomes. A key participant incentive to better health is the ability to earn additional HRA dollars as outcomes are achieved, including adherence to preventive care guidelines.

Cerner, like most employers, also offers associates the ability to make pre-tax contributions to a health FSA. Contributions can be used for qualified medical, dental and vision expenses. Like the HRA, FSA contributions are not limited to health plan expenses such as deductibles and cost-share. Associates utilize their healthcare FSA for other qualified expenses outside of the health plan, and it would be difficult for employers to determine specifically what FSA expenses are attributable to out-of-pocket costs incurred under the health plan.



Cerner recommends the IRS consider the following issues specific to tax-favored reimbursement accounts:

- HRA contributions that are contingent on completing wellness activities are difficult to segregate and value because they vary based on achievement of specific criteria. Therefore, these contributions should be excluded from the definition of applicable coverage.
- For non-wellness related HRA contributions, Cerner believes it would be the least administratively burdensome to determine the cost of applicable coverage under an HRA based on amounts made newly available to participants each year.
- FSA and HSA contributions and purposes vary substantially amongst employees and employers, and therefore, determining value will present significant administrative and cost burdens if they are to be included in the definition of applicable coverage. We recommend that health FSA and HSA contributions be excluded from the definition of applicable coverage.

### **3. *Providing flexibility in determining cost of coverage, particularly for growing populations.***

Cerner generally support the IRS's approach to the use of COBRA premiums for self-insured plans; however, we urge the IRS to provide flexibility in the use of the accepted COBRA methods, as limitations proposed will be administratively burdensome for employers, such as Cerner, who continue to experience growth and add new jobs.

Cerner recommends the following with regard to cost of applicable coverage determinations for self-insured plans:

- Allow self-insured plan sponsors the continued choice to use their preferred valuation method, either actuarial value or past cost, but not require the use of either method for periods longer than two years. Employers should retain the flexibility to switch between methods at least every two years as the Past Cost method is likely to artificially inflate costs when subscriber count increases significantly or there is a significant coverage change in the underlying health plan.
- In regards to the actuarial method, the IRS should permit a comprehensive standard under which the cost of applicable coverage for a group of similarly-situated individuals is equal to a reasonable estimate of the cost of providing coverage under the plan for individuals in that group for the determination period, using realistic actuarial principals.
- When using the past cost method, Cerner supports using as the 12-month measurement period for a current determination period any 12-month period ending not more than 13 months before the beginning of the current determination period.
- With respect to the cost of claims, Cerner supports allowing the use of either claims incurred during the measurement period or claims paid during the measurement period.
- In regard to onsite medical clinics, Cerner supports the presumption that the administrative fees paid to the third party administrator for the underlying health plan are inclusive of overhead expenses for all providers, and no separate determination on expenses should be calculated. From a health plan perspective, our onsite medical clinics are considered a provider for purposes of claims payments. Our onsite medical clinics file claims to the health plan, just as community providers do. Cerner urges the IRS to view onsite medical clinic expenses no differently than community providers.



Cerner appreciates the opportunity to provide comments to the IRS. We believe that § 4980I should support ACA's goals to 1) lower health care spend (2) increase access to care and (3) to improve the overall health of the populations. Our recommendations seek to point out the misalignment between § 4980I and these goals.

Again, thank you for considering our comments and recommendations on the implementation of Code § 4980I. Please contact me at 816-201-8916 if you would like to discuss these comments in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mike Heckman', with a long horizontal flourish extending to the right.

Mike Heckman  
Vice President, Population Health Services