Notice 2015-16

CVSHealth

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Internal Revenue Service
P.O. Box 7604
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Washington, DC 20044

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RE: Notice 2015-16

Dear Sir or Madam:

CVS Health, on behalf of its subsidiaries and affiliated entities, appreciates the opportunity to comment on IRS Notice 2015-16 ("Notice") and section 4980I of the Code. CVS Health is a pharmacy innovation company helping people on their path to better health. Through our more than 7,800 retail pharmacies, more than 900 walk-in clinics, a leading pharmacy benefits management business with more than 65 million members and an expanding specialty pharmacy services business, we enable people, businesses and communities to manage health in more effective ways by lowering the cost of and increasing access to quality health care. As a preeminent pharmacy benefit manager, we maintain a national network of more than 68,000 retail pharmacies, consisting of approximately 41,000 chain pharmacies (including our CVS retail pharmacies) and 27,000 independent pharmacies in the United States, Puerto Rico, the District of Columbia, Guam and the Virgin Islands. As of December 31, 2014, CVS Health had over 215,000 employees.

CVS Health is a member of American Benefits Council, Business Roundtable, U.S. Chamber of Commerce, National Business Group of Health and Retail Industry Leaders Association, and our views from the perspective of an employer are reflected in the comments on the Notice submitted by these organizations.

In addition, we would like to comment on the definition of the term "person that administers the plan benefits" in Section 4980I(f)(6). Specifically, we request that Treasury expand and clarify the definition of this term. In the case of other applicable employer-sponsored coverage, section 4980I(c)(2)(C) states that the "person that administers the plan benefits" is liable for the excise tax. Section 4980I(f)(6) provides that the term "the person that administers the plan benefits" "*shall include* the plan sponsor if the plan sponsor administers benefits under the plan (*emphasis added*)". On the other hand, "plan sponsor" is defined in section 4980I(f)(7) simply by cross-reference to the definition of that term in section 3(16)(B) of the Employee Retirement Income Security Act of 1974 ("ERISA").

We are concerned that the definition of "person that administers the plan benefits" in section 4980I(f)(6) is unclear, and could be misinterpreted to potentially—and, we believe—incorrectly impose liability for the excise tax on third party administrators ("TPAs") or pharmacy benefit managers ("PBMs"). We do not believe that this outcome is consistent with the intent of Congress in enacting the excise tax. Since TPAs and PBMs simply manage or administer the benefit delivered under employer plans and are not in this capacity in a position to change the design of the plan benefits, it would not achieve Congress's intent to impose the liability for the excise tax on these entities, nor would it be appropriate.

To avoid this risk and better reflect Congressional intent, we recommend that Treasury clarify that the term "person who administers the plan" in section 4980I(f)(6) means the "plan administrator" as defined in Section 3(16)(A) of ERISA. This would provide a more precise and well-established definition of the term, achieve consistency with the definition of "plan sponsor" in Section 4980I(f)(7), and properly allocate any potential liability for the excise tax.

I would be happy to discuss this issue with you if you have comments or questions about this submission. My email address is John.Kennedy@CVSHealth.com or I can be reached by phone at 401-770-2378.

Respectfully submitted,

John P. Kennedy
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Senior Vice President