



Notice 2015-16

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May 15, 2015

CC: PA: LPD: PR
Notice 2015-16
Internal Revenue Service
U.S. Department of the Treasury
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Comments on Excise Tax on High Cost Employer-Sponsored Health Coverage – Exclusion of Self-Insured Dental Benefits

To Whom It May Concern:

I am writing on behalf of the Delta Dental Plans Association in response to the invitation for comments included in Notice 2015-16, guidance on "Section 4980I - Excise Tax on High Cost Employer-Sponsored Health Coverage". *IRB 2015-10* at 732 (the "Notice"). In particular, we are writing in support of the approach proposed by the agency in the Notice, under which self-insured limited scope dental and vision coverage that qualifies as an excepted benefit pursuant to the recently issued regulations under § 9831 would, like fully-insured coverage, be excluded from applicable coverage for purposes of the excise tax. *IRB 2015-10* at 735-36.

In the Notice, the agency states that, in general, whether coverage is insured or self-insured is not relevant for purposes of section 4980I, including for purposes of identifying whether any coverage is applicable employer-sponsored coverage. *IRB 2015-10* at 735. We fully agree that there should be no distinction between insured and self-funded limited scope dental coverage for purposes of Section 4980I and respectfully submit that this conclusion is also consistent with the statutory language in several interrelated sections of the Internal Revenue Code ("the Code").

First, the excise tax applies to "applicable employer-sponsored coverage" which is defined in the Code as coverage under "any" group health plan. Code 4980I(d). As explained in the Notice, the term "group health plan" for purposes of § 4980I is defined in § 5000(b)(1) as "a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees . . ." No distinction is drawn between group health plans that are insured versus self-insured. In fact, the cited definition of "group health plan" expressly includes both types.

Second, the Joint Committee on Taxation ("Joint Committee") explains that the phrase "employer-sponsored health insurance coverage" includes both fully-insured and self-insured health coverage". *JCX-18-10* (March 21, 2010) at 62. In addition, the Joint Committee explains that the value of "employer-sponsored health insurance coverage" does not include "any" coverage under a separate policy, certificate, or contract of insurance which provides benefits substantially all of which are for treatment of the mouth." *JCX-18-10* at 63.

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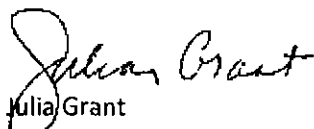
As explained by Senator Baucus (D-MT), then-Chairman of the Senate Committee on Finance, the Joint Committee's technical explanation (*JCX-18-10*) of the revenue provisions of the ACA is "the committees' understanding and legislative intent behind those provisions". *Congressional Record*, Senate; April 12, 2010 at page S2203. We note that the agency cites in the Notice the Joint Committee's official explanation for the provision relating specifically to limited scope dental benefits. *IRB 2015-10* at 735.

Third, as the agency observed in the Notice, regulations were recently amended to clarify the conditions for self-insured dental benefits to be an "excepted benefit." *IRB 2015-10* at 735-36. Dental benefits are "excepted" if either: (1) the coverage can be declined; or (2) the claims are administered under a contract that is separate from the administration of other benefits under the plan. This clarification was intended "to achieve greater consistency between insured and self-insured coverage". 79 *Fed. Reg.* 59130, 59136 (October 1, 2014).

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In conclusion, we strongly support the agency's proposed approach under which self-insured limited scope dental coverage that qualifies as an "excepted benefit" would be excluded for purposes of determining the cost of "applicable" employer-sponsored coverage under Code section 4980I. We appreciate the agency's consideration of these comments and ask that the agency implement the proposed approach in a future rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "Julia Grant". The signature is fluid and cursive, with the first name "Julia" being more prominent than the last name "Grant".

Julia Grant
Vice President Government Relations
Delta Dental Plans Association