



McTEAGUE HIGBEE

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May 7, 2015

IRS Counsel
Internal Revenue Service
U.S. Department of the Treasury

RE: IRS Code Section 4980I Cadillac Tax Notice 2015-16

To Whom It May Concern:

In response to the request for comments on IRS Code Section 4980I Cadillac Tax Notice 2015-16, we have identified the below items as needing further consideration:

- Employee FSA and HSA contributions should not be included as applicable coverage in the statutory dollar limit. For years we have encouraged employees to save responsibly for medical expenses and this would be a major deterrent. In addition, these are funds the employee has made the choice to contribute on their own and are not funds provided by the insurance carrier or the employer.
- The statutory dollar limit (currently \$10,200 for self-coverage and \$27,500 for other-than-self-only coverage) should be tied to state indexed premiums as opposed to federal. A state such as Maine has a small population and very geographically dispersed populations of both patients and medical providers. These factors, when combined with state mandates for a number of benefits, have created a situation where the number of insurers doing business in the state has been historically low and the costs of healthcare and insurance have historically been high. Employee plans in states like ours with higher overall healthcare costs resulting in higher premiums will be unfairly punished, while states with lower healthcare costs and lower premiums will benefit.
- Several factors need to be taken into account when labeling a plan "Cadillac" or deciding upon the statutory dollar limit. These include plan design, premium, and claims experience. For an experience rated plan, high premium levels do not necessarily indicate a rich benefit (Cadillac) plan design but may reflect an older and/or sicker population and greater usage of benefits. Also a large self-funded plan is easily able to avoid the tax because of their ability to influence their COBRA premiums. Fully-insured groups, especially in the small group market that is community-rated, receive rates from insurers that have been filed with and approved by the states and have no ability to affect or adjust those rates.

- If HRAs are to be considered applicable coverage, then the premium for an HRA should be calculated using the COBRA calculation. The COBRA premium is calculated based on actual utilization of benefits and not on the maximum possible benefit available. Especially for HRA plans that cover only deductible or co-pay expenses, it is common in any given year for a beneficiary to not fully utilize the available benefit and, in some instances, to not receive any benefit from the plan, depending on other health care expenditures. The average utilization rate for HRA plans falls anywhere between 20% and 40% of available benefits.
- The law needs to clarify who is responsible for payment of the Cadillac Tax if a plan includes medical insurance premiums and any additional applicable employer-sponsored coverage (i.e. FSA, HRA or HSA contribution.) Is the medical insurer still responsible for the penalty or must the employer pay a portion of the penalty?

Should you have any questions, please contact me at the address, phone number or email below.

Sincerely,

Susan B. Collins

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