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Notice 2015-16

MAY 19 2015

May 15, 2015

MEDICA.

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

Submitted electronically: Notice.comments@irscounsel.treas.gov

Re: Notice 2015 – 16 on the Excise Tax on High Cost Employer-Sponsored Health Coverage

To Whom It May Concern:

Thank you for the opportunity to provide comments in response to the Internal Revenue Services' ("IRS") Notice 2015-16 on the Excise Tax on High Cost Employer-Sponsored Health Coverage ("Notice") published February 23, 2015. Medica[1] (also referred to as "we," "our," or "us,") is an independent and nonprofit health care organization with approximately 1.5 million members, and is Minnesota's second largest nonprofit provider of health insurance and related services. Medica's mission is to work with members and its contracted providers to make health care accessible, affordable and a means by which our members improve their health.

Medica encourages the IRS to implement the excise tax in a way that minimizes the administrative burden on employers, encourages choice for employees, and offers deference to employee benefits that lower health care costs. The excise tax may have a disproportionate impact on our members in each of these categories due to market dynamics within our service area. Specifically, employers are demanding defined contribution options that offer a broad array of coverage options for their employees. Within these choices and in the broader employer-sponsored health insurance market, high-deductible health plans are a popular option for employees in our service area. Our organization is concerned about the impact of this excise tax on the group market, its potential impact on the individual market, its administrative complexity, and its implementation timeline.

Our organization also supports comments submitted by America's Health Insurance Plans ("AHIP"). The letter outlines specific concerns with the Notice and encourages the IRS to delay enforcement of the excise tax. Just as the IRS delayed enforcement of the employer shared responsibility mandate, we believe a delay in the enforcement of the excise tax will allow employers and other stakeholders greater time to plan and prepare for implementation.

[1] "Medica" refers to the family of businesses that include Medica Health Plans, Medica Health Plans of Wisconsin, Medica Insurance Company, Medica Self-Insured and Medica Health Management, LLC, as well as sister organizations Medica Foundation and the Medica Research Institute.

Our comments in section I focus on four policy concerns. In section II, we offer three recommendations on how to protect employees from the effects of the excise tax. We offer the following comments for your consideration:

I. Policy Concerns with the Excise Tax

Medica has four policy concerns with excise tax and the proposals suggested by Notice.

1. Taxes should not discourage initiatives that lower health care costs.

As a fundamental matter, we are concerned about tax policies that discourage investments in services and programs aimed at lowering health care costs. The policies announced the Notice may have the effect of chilling such initiatives by subjecting them to an expensive and administratively burdensome excise tax. For example, on-site medical clinics offer employees access to preventive care, such as immunizations, in a convenient manner. Including on-site medical clinics in the calculation of a forty-percent excise tax discourages employers from offering such time and cost-saving benefits to their employees.

Similarly, wellness programs offered in connection with a group health plan incent employees to improve their health, prevent disease, and reduce health care costs overall. Wellness programs are cost-effective methods of addressing population health issues, such as tobacco use, diabetes, BMI measurements and physical inactivity. These programs encourage and can reward employees for learning more about their health and taking steps to improve their health.

Medica is concerned about including specific employee benefits in the calculation of the excise for employers, particularly Internal Revenue Code § 4980I(d)(2)(C) regarding employer and employee pre-tax contributions to Health Savings Accounts ("HSAs"). If employee pre-tax contributions to HSAs are included in the calculation of the excise tax, it would create a substantial administrative burden for employers. Employers would be required to calculate and collect information on several components of their health care coverage in order to report it to their health plan. This administrative burden would divert time and resources away from other employer priorities, including employee benefits and wages.

Furthermore, Minnesota has one of the highest percentages of private coverage enrollees with HSAs in the nation,[2] and subjecting pre-tax employee contributions results in policy of discouraging employers from offering this valuable option to employees. Compared to the rest of the country, a disproportionate share of Minnesota employers and residents may pay a forty percent excise tax for selecting reasonable and modest health care coverage tied to an HSA.[3] This is not the intent of the excise tax. HSAs help employees save for their current and future medical needs, and encourage individuals to be cost conscious in consuming health care goods and services. Both of these are designed to reduce overall health care costs. Subjecting

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[2] AM.'S HEALTH INS. PLANS, JANUARY 2013 CENSUS SHOWS 15.5 MILLION PEOPLE COVERED BY HEALTH SAVINGS ACCOUNT/HIGH-DEDUCTIBLE HEALTH PLANS (HSA/HDHPS) 2 (2013).

[3] In 2013, Minnesota had 552,228 lives covered under HSA/HDHPs, which accounted for 13.5% of commercial enrollment. *Id.* at 8.

mechanisms and efforts designed to reduce health care costs to the excise tax discourages their use, which has the ultimate effect of increasing health care costs. We encourage the IRS to exclude individual and employer HSA contributions from the calculation of the Cadillac Tax.

Fortunately, this is an instance where we believe the IRS has regulatory flexibility. We agree with AHIP's analysis that the IRS should exclude employee pre-tax salary reductions to HSAs from the definition of "applicable employer-sponsored coverage;" Code section 4980I(d)(2)(B) will be internally inconsistent by reading "employer contributions" to also include employee pre-tax contributions to HSAs.[4]

Exposing mechanisms and efforts designed to reduce health care costs, such as wellness programs, on-site medical clinics, and employee pre-tax contributions to HSAs to the excise tax discourages employers from offering them, which has the ultimate effect of increasing health care costs for everyone.

2. Taxes should not punish responsible employers who offer employees choice in their health plan options.

In an effort to minimize the impact of the excise tax, employers may reduce the benefits and health plan choices available to their employees. While not all employees enroll in benefit-rich policies or policies with open access networks, some employees enroll in them because of the health needs of their families, such as a dependent child with cystic fibrosis. Responsible employers offer different levels of health coverage to give their employees choices so that they may select the health plan best-suited to their needs. The excise tax may discourage employers from offering a variety of plan options in order to meet varying health needs of their employees. It instead encourages employers to adopt a "one-size fits all" health plan benefit structure. The anticipated consequence is that employers will reduce their health plan benefits to avoid the tax, and this ultimately harms employees who need benefit-rich options to manage their household's health care needs.

3. The excise tax should only apply to group health plans and not self-employed individuals.

Medica is very concerned about the application of excise tax to self-employed individuals. Code section 4980I(d)(1)(D) imposes the forty percent excise tax on self-employed individuals if the cost of the coverage is allowable as a Code section 162(1) business expense deduction. Although many stakeholders are focusing on the excise tax's effects on the group health insurance market, the language in Code section 4980I(d)(1)(D) imposes the excise tax on the individual health insurance market. If self-employed individuals, as sole proprietors, buy health insurance that is

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[4] According to AHIP

> Given the reference to "employer contributions" in Code section 4980I(d)(2)(B)(i), the only amounts remaining that could potentially be encompassed by the statutory language of Code section 4980I(d)(2(B)(ii) are employee pre-tax contributions via salary reduction. Accordingly, if the reference to "employer contributions" is read to include employee pre-tax salary reduction contributions, then the language of Code section 4980I(d)(2)(B) would be rendered meaningless.

deductible under Code section 162(1) in the individual market, then health plans will have to account for the excise tax in the development of their individual health insurance market rates, and spread the cost of the tax across the entire market. Health plans have no way to calculate the proportion of the individual market that is comprised of self-employed individuals and their families.

The imposition of the excise tax on coverage offered to self-employed individuals in the individual market even further complicates the administrative complexities for members and health plans. Individual members, not an employer, will be responsible for determining and administering the excise tax amounts owed, and health plans will have a limited ability to ask individuals during the application process whether they are self-employed individuals with other coverage that may count as part of the excise tax.[5]

4. Operationalization of the excise tax should not be prohibitively burdensome.

Lastly, we caution to the IRS to consider the administrative burden the excise tax imposes on employers and health plans. The process for calculating and assigning the pro rata share of any excise tax amount due will be administratively burdensome and costly for employers to implement.[6] The administrative burden of calculating, collecting, and paying the excise tax may result in employers dropping coverage entirely or passing the costs on to their employees in terms of reduced benefits and wages. Again, our organization is concerned about the excise tax's potential impact on choice and cost. We encourage the IRS to consider these issues when developing proposed rules on the excise tax.

II. Recommendations

We offer three recommendations to improve the implementation of the excise tax. First, we recommend that the IRS delay the collection and enforcement of the excise tax. Many employers and unions are negotiating health plan coverage benefits that extend beyond the effective date of the excise tax. By the time the final regulations are published, employers and unions will have established their benefits and will be unable to account for any regulatory shifts. A delay in the collection of the excise tax would give employers an opportunity to plan for the changes in a more thoughtful, employee-friendly manner.

Second, we encourage IRS to adopt a safe harbor of non-enforcement for the excise tax in instances where an employer satisfied the employer shared responsibility requirements. Employers that satisfy the requirements of employer shared responsibility by offering plans that

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[5] We support AHIP's recommendation that the IRS should, in all instances, exclude individual insurance policies purchased by self-employed persons from the scope of the excise tax. We believe, as AHIP stated, that Congress could not have intended "for Code section 4980I to apply to individual, *i.e.*, non-group, policies sold in the individual insurance markets to self-employed persons" because health plans have no way of knowing whether an individual insurance product is purchased by the self-employed.

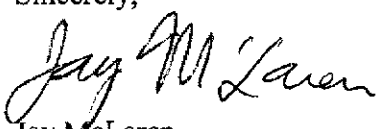
[6] We support AHIP's recommendation that the IRS should define the term "person that administers the plan benefits" to be the entity listed as the "plan administrator" on the Form 5500, or that would be so listed if the annual reporting requirement were applicable to the plans.

meeting minimum value will eventually meet the thresholds of the excise tax due to inflation. Employers should not have to decide whether to offer coverage and be subject to the excise tax, or not offer coverage and be subject to the employer shared responsibility penalty. Therefore, we recommend a safe harbor for the imposition on the excise tax in instances where employers offer a plan meeting minimum value.

Third, in a similar vein, we encourage the IRS to adopt a policy that the cost of coverage subject to the excise tax excludes benefits required under state or federal law. State legislatures continue to add new benefits, such as autism therapy and telemedicine, and the U.S. Department of Health and Human Services is debating the meaning of the nondiscrimination provisions under 45 C.F.R. § 156.125. Employers and health plans should not be liable for the excise tax if the cost of coverage exceeds the allowable amount due to the imposition of benefits by federal or state law. Imposing the excise tax on mandated benefits contradicts one of the stated purposes of the excise tax; namely, to reduce the demand for high-cost coverage. If high-cost coverage is the result of a state or federal mandate, employers will not have the option to avoid the coverage and reduce their tax liability. Employers, and their employees, will be punished through the imposition of the excise tax for selecting high-cost coverage that is mandated by law when they have no other options available to them.

Thank you once again for the opportunity to provide these comments. Please do not hesitate to contact me if you have any questions or would like to discuss these comments in more detail.

Sincerely,



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