

MAY 19 2015

Notice 2015-16

**Medical Mutual's
Comments Regarding Notice 2015-16
Section 4980I – Excise Tax on High Cost Employer-Sponsored Coverage
May 15, 2015**

Medical Mutual is writing to provide comments in response to Notice 2015-16, which provides initial guidance regarding the excise tax on high cost employer-sponsored health coverage under Internal Revenue Code (Code) § 4980I.

A trusted insurer for more than 80 years, Medical Mutual is the oldest and largest health insurance company headquartered in the state of Ohio. As a mutual company, we operate for the benefit of our more than 1.5 million members. Medical Mutual develops and implements products, services and long-range strategies that allow us to better serve our customers and the communities around us.

Medical Mutual is providing comments on two aspects of Notice 2015-16: retired employees and valuing HRAs.

I. Retired Employees

Recommendation

Retired employees who have not attained the age of 65 and retired employees who have attained the age of 65 should be treated as similarly situated beneficiaries, regardless of the type of benefits package provided by the employer.

Discussion

Code § 4980I(d)(2)(A) provides that, in the case of applicable coverage provided to retired employees, the plan may elect to treat a retired employee who has not attained the age of 65 and a retired employee who has attained the age of 65 as similarly situated beneficiaries. Studies have consistently demonstrated high health care utilization and costs in the early retiree population due to the presence of one or more chronic conditions. Also, the intent of the Affordable Care Act's Early Retiree Reinsurance Program makes clear the challenges to this sub-population. Consider, for example, the following from the Center for Consumer Information and Insurance Oversight:

[E]arly retirees between ages 55 and 64 often faced difficulties obtaining insurance in the individual market because of age or chronic conditions that made coverage unaffordable or inaccessible. These early retirees were often charged more for health coverage based on their health status, or denied coverage altogether in the individual market. Early retiree health coverage through employment-based plans provides a valuable bridge from employment coverage . . . to Medicare coverage Over the past 20 years, however, the availability of group health coverage for America's retirees has declined significantly. The percentage of large employers providing workers with retirement health coverage has dropped from 66 percent in 1988 to 29 percent in

2013. (Available at www.cms.gov > CCIIO Home > Insurance Programs > Early Retiree Reinsurance Program.)

Certainly, the 40% excise tax increases the challenges of providing and maintaining health care coverage for early retirees. With these challenges in mind, regardless of the type of benefits package provided by the employer, pre-65 and post-65 retired employees should be treated as similarly situated beneficiaries.

II. Valuing HRAs

Recommendation

The Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) should provide more clarity for valuing Health Reimbursement Arrangements (HRAs).

Discussion

HRA valuation will become more complex with a 40% excise tax if Treasury and IRS provide different methodologies for employers to select when valuing HRAs. The open questions about valuation arise from the manner in which HRAs are utilized. For example, would an HRA be overvalued if an employee does not exhaust his or her HRA funds annually? And what would happen if an HRA is used for an excepted benefit?

Medical Mutual recommends that in cases where employees are able to carry over unused HRA balances, only the amounts contributed by the employer in the current tax year should be subject to the excise tax. Medical Mutual also recommends that Treasury and IRS provide clear guidance that HRAs used in conjunction with excepted benefits are not subject to the excise tax.

These concerns have similarly been raised and addressed by America's Health Insurance Plans (AHIP) in its Comments Regarding Notice 2015-16. Medical Mutual agrees with AHIP's recommendations.