

Notice 2015-16

MAY 12 2015

May 7, 2015

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

Re: Excise Tax on High Cost Employer-Sponsored Health Coverage (IRS Notice 2015-16)

Dear Ms. Levin:

Pfizer, Inc. (Pfizer) appreciates the opportunity to comment on the Internal Revenue Service and Treasury's (collectively, "IRS") recent notice regarding the Excise Tax on High Cost Employer-Sponsored Health Coverage (the Notice). Pfizer is both a large employer and a manufacturer of a portfolio of products and medicines that support wellness and prevention, as well as treatment and cures for diseases across a broad range of therapeutic areas. As such, we are concerned about the Excise Tax not only because of its administrative implications, but also because of the consequences it could have for appropriate patient access to our products and medicines.

Geographic Variation We are concerned that the Excise Tax could be implemented in a way that goes beyond discouraging the overuse of medical services, which is its stated goal. In particular, we believe that the Excise Tax has the potential to be discriminatory in parts of the country where the unit costs of health care services are higher. Differences in per employee spending, and thus the likelihood that an employer will be subject to the Excise Tax, may reflect differences in unit costs rather than a difference in utilization of health care services. Regional variation in the unit costs of health care services is well documented.¹ In fact, the Centers for Medicare and Medicaid Services account for this variation in numerous ways in calculating Medicare reimbursement rates.

According to Joint Committee on Taxation estimates, most of the revenue to be raised by the Excise Tax will come from a reduction in the generosity of employer-sponsored health coverage (and a corresponding increase in taxable wages), not from the collection of the tax. That means that employees in areas of the country where the cost of health care inputs is higher are at greater risk of seeing their health care benefits reduced than are employees in areas of the country where the cost of health care inputs is lower, and for this outcome there is no rational public health justification. To the extent that the IRS believes that the statute provides flexibility, we urge the IRS to consider allowing the Excise Tax thresholds to vary by geography, so that employees in areas of the country where the unit costs of health care services are higher are not unfairly and inappropriately impacted by the Excise Tax.

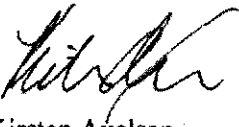
¹ See, e.g., Urban Institute, *Geographic Variation in the Cost of Living: Implications for the Poverty Guidelines and Program Eligibility* (June 2013), available at <http://aspe.hhs.gov/hsp/14/GeographicVariation/UrbanGeographicVariation.pdf>.

The Notice raises the question of whether the cost of Applicable Coverage for an employee could be determined by reference to coverage available elsewhere based on actuarial values, metal levels (bronze, silver, etc.), or other metrics. The statute states that the cost of Applicable Coverage "shall be determined under rules similar to the rules of section 4980B(f)(4)." Section 4980B(f)(4) describes the methodology for determining the COBRA applicable premium, which is based on the cost of applicable coverage provided to similarly situated employees of the employer. We support the idea of basing the thresholds on actuarial value because this would reduce the unintended discriminatory effects of the dollar thresholds, and we encourage the IRS to fully explore this alternative.

Preventive Services We also ask the IRS to show special consideration to high value preventive services in calculating Applicable Coverage. The Internal Revenue Code (Code) currently defines Applicable Coverage to mean, "with respect to any employee, coverage under any group health plan made available to the employee by an employer which is excludable from the employee's gross income under section 106, or would be so excludable if it were employer-provided coverage..."² Section 2713 of the Affordable Care Act requires that employers make a number of preventive benefits available to employees with no cost-sharing, in recognition of the contribution that prevention makes to health care efficiency. These services include screenings for cancer and many other medical conditions, a wide range of immunizations, and tobacco cessation counseling and interventions, among others. Coverage for these services increases employer spending, and also the likelihood that an employer will exceed the Excise Tax threshold, whether the threshold is based on a dollar limit or on actuarial value. We believe it is inconsistent to require that employers provide such benefits and then effectively penalize them if these benefits drive plan spending above the Excise Tax thresholds. Similar to the preventive care safe harbor that exists under IRS regulations for health savings account-eligible high deductible health plans, an exception for preventive care should be instituted for purposes of the Excise Tax, and we encourage the IRS to consider exploring whether statutory authority exists for making this change.

Pfizer appreciates IRS' consideration of our comments. Please contact Brian Agnew at 212 573 3325 with any questions or if you wish to discuss any of the suggestions made in this letter.

Sincerely,



Kirsten Axelsen
Vice President U.S. Policy
Pfizer, Inc.
235 E. 42nd Street
New York, NY 10017

² Internal Revenue Code § 4980J(d)(1)(A).