

HEALTH SERVICE SYSTEM  
CITY & COUNTY OF SAN FRANCISCO

MAY 18 2015

*Notice 2015-16*

May 11, 2015

Karen Levin  
Office of the Associate Chief Counsel  
CC: PA: LPD: PR (Notice 2015-16), Room 5203  
Internal Revenue Service  
P.O. Box 7604, Ben Franklin Station  
Washington, DC 20044

Dear Ms. Levin:

The San Francisco Health Service System representing four employers and covering over 112,000, covered active employees, retirees and their dependents is grateful for the opportunity to comment on the Internal Revenue Service's guidance (Notice 2015-16) regarding the excise tax on high cost employer-sponsored health coverage under §4980I of the Internal Revenue Code.

Despite difficult financial times during the past decade, the public employers (City and County of San Francisco, San Francisco Unified School District, the Community College of San Francisco and the Superior Court of San Francisco) continued to provide health coverage for employees, retirees and their dependents. The coverage is not extravagant; it meets minimum essential coverage requirements and as important it complies with the laws and regulations set by the California State Legislature and the California Department of Managed Care. We urge the IRS to apply the excise tax consistent with Congress' original intent and to guard against discouraging employer-sponsored coverage and wellness programs for America's employees.

The policy goal of discouraging excessively generous employer insurance coverage must be kept at the center of your consideration.

Our comments follow in the order of the sections published.

Section §4980I(b)(3) provides two baseline per-employee dollar limits for 2018 specifically for self-only coverage and other-than-self-only coverage. The latter, "other-than-self-only coverage" is inadequate for family coverage and will unfairly tax families.



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Section §49801(b)(3)(ii) provides a "health cost adjustment percentage" will be adjusted prior to 2018. We believe specific geographic measures of current medical costs should be put in place and revised periodically to account for the wide variance in medical costs throughout states.

Section §49801(b)(3)(C) specifies per-employee baseline dollar limits for 2018 coverage. As you may know health care costs in Northern California are among the highest in the nation. It seems that this significant geographic difference from even other parts of our large and diverse state are not considered in establishing the baseline(s) for the excise tax and we urge the IRS to consider establishing a baseline differential based on geographic medical cost differences, lest those people living in high cost areas not be taxed unequally.

Section §49801(b)(3)(C)(iii) provides for age and gender adjustments based on the characteristics of an employer's workforce. The age of government employees today is older than the private sector and because of this have higher incidence of chronic illness and their actuarial risk scores are reflected in underwriting and higher premiums. We suggest that the dollar amount be increased to reflect the increased costs of covering an older workforce.

Section §49801(b)(3)(C)(iv) provides for increased dollar limits for high-risk professions such as installation of electrical or telecommunication lines, paramedics, and first-responders etc. This is unfair from three perspectives, first, municipal employers blend coverage across all employees, second, given the increase in violence in work environments today, all employees: teachers, crossing guards, administrative and technical positions are in high risk positions and lastly, injury and illness related to the work environment is covered by Workers' Compensation, not employer sponsored health benefits.

Not all employers provide retiree coverage and cost is the primary driver. Employers who do provide retiree coverage should not be punished by this excise tax. This section also provides an additional amount for "qualified retirees" who are older than 55 but are not eligible for Medicare under title XVII of the Social Security Act." While we appreciate this nod toward the increased costs of covering retirees over 55, we respectfully request that the age be lowered to 50. Many workers begin their careers early and by age 45 are eligible for retirement but have acquired significant chronic illness along the way. Actuarially retirees over 45 have higher risk scores and their premiums are far higher than when they were active employees. We respectfully request that the age be lowered to acknowledge these increased costs, and that the additional dollar amount be increased to reflect the increased costs of covering these retirees.



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§4980I(d)(1)(B)(i) includes on-site medical clinics (that provide more than de minimis medical care) as taxable “applicable coverage.” In the case of large employers the convenience of urgent treatment and chronic care management and health promotion at the worksite is proven to decrease costs over a lifetime. This care should not be discouraged by taxation when it is provided in addition to other medical coverage.

Section §4980I(b)(3)(C)(v) provides that a cost-of living adjustment be added to determine the applicable dollar limits for taxable years after 2018. These cost-of-living adjustments are based on general inflation (i.e. the Consumer Price Index for All Urban Consumers), rather than on medical inflation which is historically higher than general inflation. New treatments, new therapies and especially new drug therapies (chemotherapies, anti-retrovirals, and anti-arthritis drugs a.k.a. “specialty drugs”) save lives but also add to a medical trend that is currently three times the rate of general inflation.

§4980I(d)(2)(A) provides that a 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 and allowing for the blending of pre-and post-65 retirees when calculating the cost of coverage for these groups. We agree with this designation. Indeed as has been previously described retirees under age 65 are difficult to insure because of their risk scores from chronic illness. This designation will help employers continue to provide retiree coverage.

Section §4980I(d)(2)(B) includes Health FSAs in Applicable Coverage. This inclusion puts an extra burden on coverage for E+2 or more – specifically families, who will be likely to exceed the threshold for the tax, and on people and families with chronic illness who will pay higher co-pays for medical visits, thus discriminating against people with chronic illness. Further, we do not believe that Congress intended to end the tax benefit associated with employee FSAs. If they did they would have decreased them over time rather than cut them by 50% to a maximum of \$2,500/year and then allow them to be increased each year, e.g. 2015 maximum is \$2,550. We believe that the agency should clarify that the employee contributions to FSAs will continue to receive their traditional tax preference.

Per the specific request for comment, we urge the IRS to consider limited scope dental and vision coverage as excluded from applicable coverage.

In addition, we urge Treasury and IRS to exclude from applicable coverage in Section §4980I(g) Employee Assistance Programs (EAPs). Many employees need short term assistance in coping



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with life and work changes so they may continue to work, short term interventions at the workplace or by phone do not begin to meet the mental health parity standard required to be included in health plan coverage.

Lastly, we urge the IRS to move this regulatory process quickly. At the present time the SFHSS is finalizing benefits for plan year 2016. Should benefit design changes need to be made for a 2018 implementation, they will need to be negotiated next year and budgeted for accordingly.

We appreciate the opportunity to comment on these important regulations. We hope the IRS will focus on limiting tax preference for overly generous employer sponsored insurance coverage rather than imposing additional taxes on working people with basic benefits all be they expensive because they are offered largely in the San Francisco Bay Area.

Please do not hesitate to contact me if I can answer any questions. You can find all of our rates and benefits for active employees and retirees, dating back to 2008, on our website at [www.myhss.org](http://www.myhss.org). You will see that these plans are not "Cadillac" plans.

Sincerely,



Catherine J. Dodd RN, PhD

Director, San Francisco Health Service System



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