

Notice 2015-16

MAY 21 2015

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

RE: IRS Notice 2015-16: A Response to the Call for Public Comment on Section
49801 - Excise Tax on High Cost Employer-Sponsored Health Coverage

Dear Ms. Levin,

Following on an earlier set of public comments submitted on May 11, 2014 in response to proposed IRS rulemaking regarding the excise tax on high cost employer-sponsored health coverage under § 4980I of the Internal Revenue Code (Code), this commentary addresses two related issues:

1. Adjustments for "Qualified Retirees" 49801(d)(2)(A)
Notice References: IV.A.2. & V.C.1
2. "Aggregation by Benefit Package"
Notice Reference: IV.C.1.

The three overarching principles guiding this commentary are identical to those set forth in the May 11th commentary---namely, to support IRS efforts to: (a) promote basic national standards that reinforce the concept of health insurance as a shared-risk and shared-benefit endeavor, (b) maintain ideals of political neutrality and "non-interference," and (c) minimize the bureaucratic burden and financial cost of monitoring rule compliance with respect to Section 48901 for all responsible administrative parties, including state-level and plan-level officials.

The issues addressed in my previous commentary revolved around the definition of "similarly situated individuals" for purposes of determining the cost of "applicable coverage" (Notice IV.C.1, pp.12-15). Those comments favored "Mandatory Disaggregation (Self-Only Coverage and Other-Than-Self-Only Coverage)" over "Permissive Aggregation within Other-Than-Self-Only Coverage" and over "Permissive Disaggregation" on the grounds that former is simpler, clearer and much less likely to "result in a standard that is susceptible to abuse" (See an IRS concern expressed on page 15 of Notice 2015-16). That commentary also suggested that the IRS consider defining "similarly situated individuals" with respect to their states of residence in deference to principle (b) above.

Upon further reflection, I am convinced that it is essential to balance "mandatory disaggregation" with the principle of "aggregation by benefit package" in determining cost of applicable coverage, whenever an employer offers employees

and annuitants a broad range of health plan options, including comparatively high-cost and low-cost coverages. Unless the IRS insists that employers calculate the cost of "applicable coverage" for each plan SEPARATELY, some groups of people enrolled in lower-cost, lower-quality insurance plans may well end up "subsidizing" the premiums their higher-cost, higher-quality counterparts. This risk will be especially grave for "medicare-retirees" enrolled in low-cost plans, if the IRS permits them to be aggregated with "qualified retirees" who do not receive medicare and are currently enrolled in "Cadillac" insurance plans. If the IRS is not careful in this regard, the whole idea of the excise tax being imposed on only high-cost plans may seriously undermined.

At the moment, the Group Insurance Board of the State of Wisconsin's Employee Trust Funds is planning to do just that. As discussed in my previous comments, the March 2015 "Segal Report," commissioned by the Group Insurance Board of the Employee Trust Fund, proposes a radical overhaul of the state's longstanding insurance program so as to avoid exposing the State to what it claims will be massive liabilities to the ACA's excise tax in the years ahead.

Among that Report's key recommendations is for the ETF to divide its long-united insurance fund into two separate trusts for retirees and for employees. The report states that by separating out retirees from active employees it should be possible to drive down rates for employees, something that is expected to "significantly" raise rates for retirees. However, the report explains on page 11 that "the net [health insurance] cost to ETF for "medicare retirees" is \$0 dollars. So, why should "medicare retirees" be forced to subsidize "qualified retirees," especially those in "high-cost"/high-benefit insurance plans. Who are these "high-cost"-plan "qualified retirees"? In Wisconsin, many are "Executive" retirees, who are allowed to age 50, unlike the vast majority of state and local employees, who cannot retire before the age of 55 and who only accrue full pension benefits at age 65. If the high costs of early retiring "Executive" retirees are going to be aggregated with "medicare retirees" in lower cost plans for purposes of determining cost of ACA excise taxes, the end result will be the comparatively "poor" subsidizing the premium rates of the comparatively "rich." Fixed income retirees, who have no possibilities for contributing to health savings accounts, will suffer seriously. In contrast, many Executive state employees who retire before 55 go on to take jobs elsewhere.

The IRS needs to think carefully about this. If 49801(f)(2) becomes so blurred that the issue of "medicare-retirees" is lost entirely, many are likely to be burdened unjustly. One safe-guard is to be certain that "medicare retirees" are recognized as a distinct group within each insurance plan, since the "applicable cost" any health care insurance received through their former employers is significantly lightened through medicare benefits. It also merits emphasis that most retirees do not have access to pre-tax health savings account. And this is another way in which the aggregate cost of their "pre-tax" health insurance benefits is lower than those of active employees.

Sincerely,

Dr. S. Hutchinson, Madison WI Submitted electronically on May 15, 2015

Retired State of Wisconsin Employees & Continuant

2015 Total Monthly Premium Rates

Health Plan Name	Annuitants and Continuant						
	Non-Medicare				Medicare Rates - Traditional		
	Coinsurance Uniform Benefits		HDHP ¹		Uniform Benefits ¹		
	Single	Family	Single	Family	Medicare Single	Medicare 1 ²	Medicare 2 ³
Anthem Blue Preferred Northeast	731.90	1,822.30	641.10	1,595.30	482.10	1,209.00	959.20
Anthem Blue Preferred Southeast	814.50	2,028.80	713.30	1,775.80	523.20	1,332.70	1,041.40
Arise Health Plan Northern	774.10	1,927.80	678.00	1,687.50	503.20	1,272.30	1,001.40
Arise Health Plan Southeast	798.30	1,988.30	699.20	1,740.50	515.30	1,308.60	1,025.60
Dean Health Insurance	676.00	1,682.60	592.10	1,472.80	422.80	1,093.80	840.60
Dean Health Insurance-Prevea360	810.40	2,018.60	709.70	1,766.80	512.80	1,318.20	1,020.60
GHC of Eau Claire	851.80	2,122.10	746.00	1,857.50	491.20	1,338.00	977.40
GHC of South Central Wisconsin	648.60	1,614.10	568.20	1,413.00	440.40	1,084.00	875.80
Gundersen Health Plan	793.40	1,976.10	694.90	1,729.80	366.30	1,154.70	727.60
Health Tradition Health Plan	813.80	2,027.10	712.70	1,774.30	408.10	1,216.90	811.20
HealthPartners Health Plan	725.20	1,805.60	635.20	1,580.50	478.80	1,199.00	952.60
Humana-Eastern	834.40	2,078.60	730.70	1,819.30	410.20	1,239.60	815.40
Humana-Western	834.40	2,078.60	730.70	1,819.30	410.20	1,239.60	815.40
Medical Associates Health Plans	675.20	1,680.60	591.40	1,471.00	357.80	1,028.00	710.60
Medicare Plus ⁴	NA ⁴	NA ⁴	NA ⁴	NA ⁴	365.00	NA ⁴	725.70
MercyCare Health Plans	602.10	1,497.80	527.50	1,311.30	369.10	966.20	733.20
Network Health	799.30	1,990.80	700.00	1,742.50	441.80	1,236.10	878.60
Physicians Plus	683.00	1,700.10	598.30	1,488.30	442.10	1,120.10	879.20
Security Health Plan	814.50	2,028.80	713.30	1,775.80	523.40	1,332.90	1,041.80
Standard Plan	1,392.80	3,477.80	1,222.40	3,049.70	NA ⁴	1,766.10	NA ⁴
State Maintenance Plan (SMP)	862.00	2,150.20	757.40	1,887.30	NA ⁴	1,230.40	NA ⁴
UnitedHealthcare of Wisconsin	795.00	1,980.10	696.30	1,733.30	513.70	1,303.70	1,022.40
Unity Health Insurance-Community	774.80	1,929.60	678.60	1,689.00	469.60	1,239.40	934.20
Unity Health Insurance-UW Health	694.20	1,728.10	608.10	1,512.80	433.30	1,122.50	861.60
WEA Trust-East	794.90	1,979.80	696.20	1,733.00	513.60	1,303.50	1,022.20
WEA Trust-Northwest Chippewa Valley	831.20	2,070.60	727.90	1,812.30	531.70	1,357.90	1,058.40
WEA Trust-Northwest Mayo Clinic Hlth. Sys.	831.20	2,070.60	727.90	1,812.30	531.70	1,357.90	1,058.40
WEA Trust-South Central	665.60	1,656.60	583.00	1,450.00	448.90	1,109.50	892.80

¹Medicare rates do not apply to the HDHP.

²Medicare 1 = Family coverage with at least one insured family member enrolled in Medicare Parts A, B and D.

³Medicare 2 = Family coverage with all insured family members enrolled in Medicare Parts A, B and D.

⁴Members with Standard Plan or SMP coverage who become enrolled in Medicare Parts A and B will automatically be moved to the Medicare Plus plan. All other non-Medicare family members will remain covered under the Standard Plan or SMP.

State of Wisconsin Employees, UW Graduate Assistants

2015 Total Monthly Premium Rates

Health Plan Name	Plan Tier	State of Wisconsin Employees - Coinsurance Uniform Benefits		State of Wisconsin Employees - HDHP		UW Graduate Assistants ¹	
		Single	Family	Single	Family	Single	Family
Anthem Blue Preferred Northeast	1	731.90	1,822.30	641.10	1,595.30	486.00	1,207.60
Anthem Blue Preferred Southeast	1	814.50	2,028.80	713.30	1,775.80	539.90	1,342.30
Arise Health Plan Northern	1	774.10	1,927.80	678.00	1,687.50	549.40	1,366.10
Arise Health Plan Southeast	1	798.30	1,988.30	699.20	1,740.50	567.60	1,411.60
Dean Health Insurance	1	676.00	1,682.60	592.10	1,472.80	446.90	1,109.80
Dean Health Insurance-Prevea360	1	810.40	2,018.60	709.70	1,766.80	541.00	1,345.10
GHC of Eau Claire	1	851.80	2,122.10	746.00	1,857.50	607.60	1,511.60
GHC of South Central Wisconsin	1	648.60	1,614.10	568.20	1,413.00	447.50	1,111.30
Gundersen Health Plan	1	793.40	1,976.10	694.90	1,729.80	563.90	1,402.30
Health Tradition Health Plan	1	813.80	2,027.10	712.70	1,774.30	544.00	1,352.60
HealthPartners Health Plan	1	725.20	1,805.60	635.20	1,580.50	512.80	1,274.60
Humana-Eastern	1	834.40	2,078.60	730.70	1,819.30	551.30	1,370.80
Humana-Western	1	834.40	2,078.60	730.70	1,819.30	551.30	1,370.80
Medical Associates Health Plans	1	675.20	1,680.60	591.40	1,471.00	448.80	1,114.60
MercyCare Health Plans	1	602.10	1,497.80	527.50	1,311.30	369.80	917.10
Network Health	1	799.30	1,990.80	700.00	1,742.50	568.40	1,413.60
Physicians Plus	1	683.00	1,700.10	598.30	1,488.30	481.20	1,195.60
Security Health Plan	1	814.50	2,028.80	713.30	1,775.80	579.70	1,441.80
Standard Plan ²	3	1,392.80	3,477.80	1,222.40	3,049.70	1,048.60	2,617.30
State Maintenance Plan (SMP)	1	862.00	2,150.20	757.40	1,887.30	651.60	1,624.40
UnitedHealthcare of Wisconsin	1	795.00	1,980.10	696.30	1,733.30	565.10	1,405.30
Unity Health Insurance-Community	1	774.80	1,929.60	678.60	1,689.00	549.90	1,367.30
Unity Health Insurance-UW Health	1	694.20	1,728.10	608.10	1,512.80	489.50	1,216.30
WEA Trust-East	1	794.90	1,979.80	696.20	1,733.00	565.10	1,405.30
WEA Trust-Northwest Chippewa Valley	1	831.20	2,070.60	727.90	1,812.30	592.30	1,473.30
WEA Trust-Northwest Mayo Clinic Hlth. Sys.	1	831.20	2,070.60	727.90	1,812.30	592.30	1,473.30
WEA Trust-South Central	1	665.60	1,656.60	583.00	1,450.00	468.10	1,162.80

¹The graduate assistant program does not offer Medicare reduced rates.

²Out-of-state residents assigned to work out of state receive the Standard Plan at a Tier 2 level.