

Notice 2015-16

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May 15, 2015

**VIA E-MAIL**

Internal Revenue Service  
CC:PA:LPD:PR, Room 5203  
P.O. Box 7607  
Ben Franklin Station  
Washington, DC 20044

Re: Notice 2015-16

In response to Notice 2015-16, WPS Health Insurance would like to offer the following comments regarding Section 4980I – Excise Tax on High Cost Employer-Sponsored Health Coverage.

1. Please refer to Section II Definition of Applicable Coverage. The section is silent on whether employer sponsored retiree plans are subject to Section 4980I. It is clear that coverage of retirees under applicable employer-sponsored coverage available to active employees is subject to Section 4980I. However, many employers offer retirees coverage under a retiree plan distinct from the plan available to active employees. Clarification regarding the applicability of Section 4980I to such plans is necessary.
2. Please refer to Section III, Part E On-site Medical Clinics. Treasury and IRS seek comment on the treatment of various levels of onsite clinic services and whether or not they should be considered “employer-sponsored health insurance coverage”. We offer the following comments on this section:
  - We recommend excluding onsite clinics that provide first aid and anything related to a work-related injury from the definition of “employer-sponsored health insurance coverage”. However, because immunizations and injections are often unrelated to work-related injuries they should be considered “employer-sponsored health insurance coverage”. If coverage for immunizations and injections is not counted as “employer-sponsored health insurance

coverage", it will be challenging to determine precisely when group health coverage begins.

- We recommend excluding from the definition of "employer-sponsored health insurance coverage" the portion of onsite clinic costs attributable to first aid and work-related injuries, assuming costs can be allocated appropriately.
  - The method for calculating the cost of an onsite clinic should be clearly defined. Many employers furnish the infrastructure for the onsite clinic and contract with a vendor to provide the onsite clinic's medical professionals. That onsite clinic may or may not be shared with other, unrelated employers (or other entities). We recommend that an employer be allowed to establish the cost of an onsite clinic as the cost of the medical professionals who staff the clinic along with the cost of any medical equipment (spread over an appropriate depreciation schedule) and the cost of any medical supplies furnished to employees or dependents. That cost could be reduced by the value of time and services provided for first aid or work-related injuries if the employer can track those costs separately. Finally, the cost would only include services and supplies furnished to the employer's covered members and exclude costs attributable to any other entities that the onsite clinic may be shared with.
3. Please refer to Section IV Determination of Cost of Applicable Coverage. Section 4980I indicates cost of applicable employer-sponsored coverage shall be determined under rules similar to the COBRA cost determination rules. However, a strict adherence to COBRA cost determination rules creates a number of issues when used for the purpose Section 4980I. Often the price of a particular benefit package is driven by the locus of risk within a group, rather than the actual richness of the benefits provided. Following are three scenarios that illustrate this concept:

- Dual Choice: An employer may offer several different health plan options to employees. Under one scenario, multiple options may be available to a given employee who lives or works in one location, while employees who live or work in other locations may not have multiple options. While these options may all provide similar Actuarial Values, they may not be of the same plan type and instead may be a mixture of HMO, Point-of-Service or PPO plans.

Furthermore, these options may be offered by multiple carriers to the one employer. The pricing of these options, particularly if they are offered by multiple insurers, may vary based on the historical health experience of the employees who choose these options.

- Retiree Coverage: An employer, together with its insurer or administrator, may pool the cost of retirees with its active employees or may have them in a separate class that does not have its experience pooled with the active employees. If retiree cost is not pooled, the cost will likely be substantially higher than the cost of the coverage provided to the active employee pool, even if the actual benefits are equal or less. Without accommodating regulations, there will likely be odd results where one class of employees does not trigger an excise tax but another class with lessor benefits does trigger an excess benefit excise tax.
- Single vs. Family: The starting, base excise tax threshold is known to be \$10,200 annually for single employees and \$27,500 for family employees, an approximately 2.7 to 1.0 ratio of family premium to single premium cost. Many existing employer plans have a ratio of family to single cost that is different than 2.7 to 1.0. As a result, if an employer health plan cost is close to the excise tax threshold, that plan could trigger the cost under the single plan only or the family plan only.

We recommend that determination of the cost of applicable coverage be calculated not at the plan tier level but for the employer as a whole. This could be accomplished by calculating the number of single employees multiplied by the single excise tax threshold and the number of non-single employees multiplied by the non-single employee excise tax threshold and comparing that to the total employer cost of coverage.

4. Section 4980I states that the employer must calculate the excise tax and notify the entity liable for the tax (the insurer or administrator) of the amount of the tax. The excise tax includes amounts that an insurer or administrator may not be aware of, such as:
  - Contributions to an HRA
  - Cost of an onsite clinic

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- Contributions to a health FSA
- Cost of ancillary "carve-out" benefits, such as executive physicals
- Contributions to a health H.S.A. if the employer is not liable for the entire tax

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The regulations should clearly indicate that calculation of the excise tax is an employer responsibility and should place any liability on carriers or administrators if the employer does not calculate the tax, miscalculates the tax or does not provide the calculation in a timely fashion.

Sincerely,



Stephanie Cook  
Director, Regulatory Quality Services  
& HIPAA Compliance Officer

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