



Health Care Reform Update



IMPORTANT NOTICE REGARDING HEALTHCARE REFORM Update #43

March, 2015

IRS Gets Started on the Cadillac Tax Implementation Process

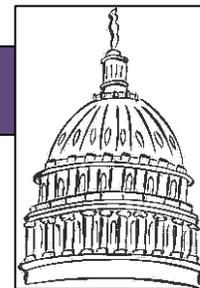
The IRS has issued Notice 2015-16 to “initiate and inform” the process of developing regulations on the excise tax on high-cost employer-sponsored health coverage under Code §. The Notice suggests and invites comment on possible implementation approaches to various issues, primarily defining applicable coverage, determining the cost of applicable coverage, and applying the annual dollar limit to the cost. The IRS anticipates issuing a separate notice to address other matters, including procedural issues relating to calculation and assessment of the tax.

Here are highlights:

- **Defining applicable coverage:** The notice lists the types of plans specified under Code § 4980I as applicable coverage (e.g., health FSAs, HSAs, governmental plans, retiree coverage, and some on-site medical clinics) or excluded from applicable coverage (e.g., long-term care, stand-alone dental or vision, and fixed indemnity coverage) and describes possible implementation rules for certain types of coverage. It indicates that employer HSA and Archer MSA contributions (including salary reduction HSA contributions) would be considered applicable coverage, while employee after-tax contributions would be excluded. Coverage through on-site clinics providing only de minimis medical care would also be excluded, as would EAPs and limited-scope dental or vision benefits (whether insured or self-insured).
- **Determining cost of applicable coverage:** The notice clarifies that the excise tax is determined based on the cost of applicable coverage in which the employee is actually enrolled, which is determined under rules similar to those for determining the COBRA applicable premium, with additional elements. For example, costs are calculated separately for “self-only” coverage and “other-than-self-only” coverage, and special rules apply for retiree coverage, health FSAs, HSAs, and Archer MSAs. The notice acknowledges existing COBRA related challenges in computing premiums, including determining who is “similarly situated” and calculating applicable premiums for self-insured plans and HRAs and suggests that certain approaches implemented under Code § 4980I might be extended to COBRA computations as well. It sets forth a potential approach for determining groups of similarly situated employees with detailed rules on employee aggregation and disaggregation.
 - Self-Insured Plans: The notice also describes potential adjustments to the existing self-insured plan methods for computing COBRA premiums, the actuarial basis and the past cost methods, and invites comments on the feasibility of determining a self-insured plan’s cost of coverage using actual current costs, while recognizing that this method would not be available for determining COBRA premiums, as those must be determined in advance of the coverage period.
 - HRAs: Approaches under consideration for HRAs include determining the cost of coverage based on amounts made newly available to a participant each year (disregarding



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carryover amounts) and, instead of or in addition to that method, permitting employers to determine the cost of coverage by adding all HRA claims and administrative expenses for a particular period (separately for each coverage level, such as self-only or family) and dividing that sum by the number of covered employees for the period and coverage level. Another option under consideration is to permit or require employers to use the actuarial basis method to determine an HRA's cost of coverage.

Last, the notice points out that, while the cost of coverage for Form W-2 reporting purposes is also based on rules similar to COBRA applicable premium rules, interim guidance issued in Notice 2012-9 is solely for Form W-2 purposes and is inapplicable to Code § 4980I. For example, under transition relief, HRA coverage is not includible for W-2 reporting but it is expected to constitute applicable coverage under Code § 4980I.]

- **Applying the annual dollar limit:** Different statutory dollar limits apply depending on whether the employee has self-only (\$10,200) or other-than-self-only coverage (\$27,500). The IRS is considering several approaches to clarify the application of the dollar limit when an employee simultaneously has one type of coverage (e.g., major medical coverage) that is self-only coverage and another type of coverage (e.g., an HRA) that covers the employee and the employee's family. The dollar limits are subject to various adjustments, including a "health cost adjustment percentage" for 2018 and cost-of-living adjustments for subsequent years, and adjustments for certain retirees and employers whose workforce age and gender characteristics vary from the national norm. Adjustments are also applicable for participants in plans primarily covering employees in specified high-risk professions (such as law enforcement and first responders). The notice seeks input on how to determine whether a plan meets the applicable criteria and on whether further guidance on high-risk professions is desirable.

Employers will be responsible for calculating the tax, while paying it is the responsibility of insurers (for insured plans), employers (for HSAs and Archer MSAs), and plan administrators (for all other coverage).

IRS Notice 2015-16 is available at <http://www.irs.gov/pub/irs-drop/n-15-16.pdf>

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