May 15, 2015

Attn: Karen Levin, Office of 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

Re: Notice 2015-16
Electronic Submission: Notice.comments@irscounsel.treas.gov

Dear Ms. Levin:

Thank you for the opportunity to provide comments in response to the Internal Revenue Service (IRS)'s recent regulatory guidance issued in Notice 2015-16 regarding the excise tax on high cost employer-sponsored health coverage.

The Alliance is a not-for-profit cooperative representing over 240 self-funded employers and health insurance trusts in Wisconsin, northern Illinois, and northeastern Iowa. These employers share the common goal of moving health care forward by controlling costs, improving quality, and engaging individuals in their health. Our members believe that providing health benefits and supporting employees' health are both business imperatives, and the key to maintaining a productive and competitive workforce.

Employer-sponsored health benefits have been the backbone of the American health care system for decades. Our members see healthy employees as essential to having a strong workforce, and most consider access to quality care as a key element of employee compensation packages, as well as a tool to attract and retain a quality workforce. Our members had long-standing issues with the cost of health care before the Affordable Care Act (ACA) was enacted, but unfortunately the passage of the ACA imposed new and additional costs and administrative burdens on our employers as part of offering health care coverage to their employees.

The ACA's passage led to costly new regulations combined with new federal requirements on benefit design and eligibility, as well as additional taxes and fees. This combination not only increases our employers' costs, but also the growing costs of the health care system. While we agree with the general theory behind the inclusion of the excise tax in the ACA-- that providing very high levels of coverage promotes over-consumption of health care-- we do not agree employers should be penalized for using innovative and cost-effective strategies to improve the health and wellness of their employees.

Therefore, when considering the issues outlined in Notice 2015-16, The Alliance advocates for two guiding principles for any future regulatory action. **We strongly believe that: 1) regulations should not hinder an employer's ability to offer cost effective strategies for improving health and 2) there must be structural fairness ensured in any future regulations.**

Defining Applicable Coverage:

To advance these guiding principles, we believe that the IRS must limit the definition of what constitutes applicable coverage in a way that only impacts excessively generous plans. Our employers should not be penalized for creating different coverage mechanisms to meet the needs of their employees, nor should they be discouraged from pursuing cost-effective ways of providing services. For example, our employers who have on-site medical clinics or offer various levels of on-site health care services are able to provide earlier treatment of their employees' injuries or illnesses, and are better able to manage chronic health conditions, thereby reducing their overall health care costs.

We applaud the IRS in recognizing that certain on-site medical clinic services are at the core of promoting employee health, and support the current statutory exclusion of on-site clinics that meet a *de minimis* care standard. However, we believe the current definition is too narrow and that drawing distinctions between what constitutes "*de miminis*" care is arbitrary and will be increasingly difficult for employers to determine. We also believe that employers should be permitted to use a cost-based measure rather than a market-based measure in valuing their on-site clinic care. Our employers are able to provide on-site services at a considerably lower cost than what is charged in the marketplace, and therefore should not be restricted from using a cost-based approach in determining their tax liability.

We strongly believe that employers' investments in wellness programs and incentives reduce both individual and overall health care spending. Our employers were disappointed to learn that a specific exclusion was not offered in the Notice for employee wellness programs. We believe wellness programs should be excluded from the excise tax altogether. Furthermore, we believe all costs associated with wellness incentives should be excluded from the cost of the underlying major medical coverage.

Our guiding principle relative to structural fairness applies to the law's current exclusion of fully-insured, stand-alone dental and vision programs. There is no policy basis to treat insured and self-funded stand-alone dental and vision policies differently; and therefore, we believe self-funded stand-alone dental and vision coverage should also be excluded from the excise tax.

Additionally, we support the current statute's exclusion of HIPPA-exempted Employee Assistance Programs (EAPs) as applicable coverage, and we recommend this exclusion remains.

We do not support future guidance that would include Health Reimbursement Accounts (HRAs) as applicable coverage. We also believe employers should have broad discretion to value their HRAs, including looking at only annual contributions, and that unused or rolled over amounts should be excluded. Amounts existing in HRAs as of January 1, 2018 should be disregarded.

In addition, we support the exclusion of retiree-only plans from the excise tax. We believe only retiree coverage offered as part of a plan that includes both active employees and retirees should be subject to valuation.

Valuing Coverage:

Current statute and the issued guidance in the Notice raise several questions for our employers on how to value coverage and what qualifies as applicable coverage. The statute indicates that the cost of applicable coverage will be determined by using rules that will be similar to the rules for determining COBRA premiums. However, current COBRA regulations do not specify how to determine the premiums, and employers have been given the flexibility to reasonably interpret the law. We believe that employers should continue to have broad flexibility in determining the costs of their plans as long as they are consistent with COBRA.

We understand current statute to state that when determining the cost of applicable coverage, any costs associated with the excise tax should not be taken into account. We are in agreement with this approach. We believe that in determining the cost of a plan, an employer should be permitted to exclude not only the direct cost attributable to the excise tax, but also a reasonable estimate of the costs that are associated with the non-deductibility of the tax. This should also include any increased corporate tax liability that is borne by the employer in the form of increased premiums or other costs as a result of the tax.

Applying Dollar Limits

We recognize that current statute does provide for annual indexing of the base annual limits, and that these base annual limits are subject to some upward adjustment for age and gender, as well as qualified retirees and certain plans with respect to qualifying high-risk professionals. However, there needs to be clarification in the rules on how these adjustments can be applied. We recommend that multiple adjustments be allowed and that they are allowed to be applied together in order to reflect variations in plan design.

We are still concerned that the current application of the tax does not take into consideration those factors that are largely out of the control of employers, such as geographic location, population demographics, or higher-than-normal claims experience. For example, some employer plans may be at risk of being taxed as overly generous simply because they are located in geographic areas with higher medical care costs or because several employees experienced “catastrophic” medical events within the same plan year. Having multiple high-cost claims could unfairly impact calculations for the excise tax for several years to make a plan appear overly generous. These additional considerations must be taken into account if we are going to maintain structural fairness across when applying the excise tax.

We are also concerned with the current statutory provisions tying the tax to the consumer price index (CPI). Indexing limits based on general consumer rates of inflation will likely not keep up with the cost of medical inflation. Because CPI typically increases more slowly than medical inflation (3-4% compared to 7-10% per year), failing to keep pace with actual medical inflation rates means more employer plans will be subject to the tax each year or they will be forced to cut benefits to avoid the tax.

We support a regulatory structure that offers incentives for the creation of a health care system that is capable of controlling costs, improving efficiency and value, and increasing overall quality—all of which would ensure a competitive workforce. Unfortunately, this system has not been achieved as a result of the ACA's passage. Increasing access to the health care system without making significant improvements in the efficiency and affordability of the system will only continue to drive up costs. The health care system cannot afford to continue to place a higher priority on health care transactions, than on wellness. Effective reform must include the necessary transparency mechanisms to enable consumers, including employers who pay for the health care of their employees, to understand and address the factors driving the costs. Therefore, we support the active involvement of employers in future discussions of changes in law and regulatory policy to improve our health care system and its ability to provide high quality, affordable coverage.

We appreciate the opportunity to provide comments on the issues specific to the implementation of the Excise Tax and more generally to the provisions of this section of the ACA. Your thoughtful consideration of these comments is appreciated. Please feel free to contact me, if you have any questions or would like additional information.

Sincerely,

Cheryl DeMars
CEO and President
The Alliance
cdemars@the-alliance.org
(608) 210-6621