



October 29, 2012

The Honorable Timothy Geithner
Secretary of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Mr. Douglas Shulman, Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Secretary Geithner and Commissioner Shulman:

The National Association of Dental Plans (NADP) is writing to seek clarification on the applicability of the fee imposed by Section 9010 of the Affordable Care Act (ACA) on health insurance providers to providers of limited scope dental benefits. NADP is writing to you because, although Section 9010 does not appear in the Internal Revenue Code, it directs the Secretary of the Treasury or his delegate to publish any necessary guidance under that section.

There is considerable uncertainty in the market on this issue. While the fee will not be collected until 2014, it will be assessed on the preceding year's premium, i.e. 2013. In order for dental plans to establish premiums for 2013 products, there needs to be certainty as to whether the fee applies to plans providing such benefits. This certainty is needed as soon as possible because dental plans and their customers are already negotiating for coverage that is effective January 1, 2013. For existing business, the urgency is that many of our members have already sent out their premium renewals and need the clarification on whether it is appropriate to include the fee in 2013 rates before the rates are finalized. Many employers want to lock in rates to complete their own budgeting processes for next year but are reluctant to accept the fee without a clear ruling from the IRS. This situation is exacerbated when these employers are negotiating multiyear rate guarantees.

Section 9010 imposes an annual fee on health insurance providers to be collected each calendar year beginning after 2013. The section does not define "health insurance." All it does is set out certain mandatory exclusions:

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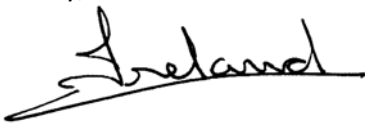
- (A) any insurance coverage described in paragraph (1)(A) or (3) of section 9832(c) of the Internal Revenue Code of 1986¹,*
- (B) any insurance for long-term care, or*
- (C) any Medicare supplemental health insurance (as defined in section 1882(g)(1) of the Social Security Act).*

As coverage for limited scope dental benefits is not among the mandatory exclusions listed above, dental plans must determine for themselves whether the fee applies to premiums for such coverage. There are good reasons to believe it should not apply. For one thing, in the market as in everyday speech “health insurance” is used to mean something much broader than dental coverage, which applies a limited range of services all relating to the mouth. Even more significantly, however, dental coverage is not the primary focus of reform efforts in the ACA. In fact, the Treasury Department and the other agencies charged with implementing the ACA exempted limited scope dental benefits very early on from most of the substantive requirements of the ACA. An exclusion from Section 9010 would therefore be consistent with the approach taken elsewhere, for good reason, under the ACA.

NADP understands the Treasury Department and Internal Revenue Service staffs are working on proposed regulations implementing Section 9010. However, we are very concerned that guidance will not be issued soon enough to help for 2013. If proposed regulations cannot be issued quickly, NADP requests that the Treasury Department and Internal Revenue Service consider issuing interim guidance, perhaps in the form of a notice, addressing just the coverage issue.

NADP appreciates your time and attention to our request. If you need any further information or background, please contact myself or NADP’s Director of Government Relations, Kris Hathaway (khathaway@nadp.org, 972.458.6998x111).

Sincerely,



Evelyn F. Ireland, CAE
Executive Director

cc: Treasury Counsel, to include -
Ms. Jessica Hauser
Mr. J. Mark Iwry
Mr. Kevin Knopf

¹ The insurance coverage described in the paragraph (1)(A) and (3) of section 9832(c) of the Internal Revenue Code of 1986 includes:

- (1)(A): Coverage only for accident or disability income insurance, or any combination thereof.
- (3) Benefits not subject to requirements if offered as independent, non-coordinated benefits
 - (A) Coverage only for a specified disease or illness.
 - (B) Hospital indemnity or other fixed indemnity insurance

National Association of Dental Plans

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Ms. Catherine Livingston
Mr. Kevin Knopf
Ms. Jeanne Ross
Mr. William J. Wilkins
Ms. Lisa M. Zarlenga

NADP DESCRIPTION

NADP is the largest non-profit trade association focused exclusively on the dental benefits industry, i.e. dental PPOs, dental HMOs, discount dental plans and dental indemnity products. NADP's members provide dental benefits to over 92 percent of the 176 million Americans with dental benefits. Our members include the entire spectrum of dental carriers: companies that provide both medical and dental coverage, companies that provide only dental coverage, major national carriers, regional and single state companies, as well as companies organized as non-profit plans.

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