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TECHNICAL INFORMATION RELEASE

TIR 18-7: Dental Service of Massachusetts, Inc. v. Commissioner – Premiums Subject to the Preferred Provider Excise

DATE:

09/10/2018

REFERENCED SOURCES:

[Massachusetts General Laws](https://malegislature.gov/Laws/GeneralLaws)(<https://malegislature.gov/Laws/GeneralLaws>)

I. Introduction and Background

Pursuant to G.L. c. 176I § 11, organizations that operate health insurance plans that include preferred provider arrangements (“PPAs”) are subject to a premiums excise equal to 2.28% of the gross premiums they receive during the year for coverage of “covered persons” residing in the Commonwealth, less certain deductions.¹ This Technical Information Release (TIR) explains the Department’s position with respect to the decision of the

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Massachusetts Supreme Judicial Court (“SJC”) in *Dental Service of Massachusetts, Inc. v. Commissioner*, 479 Mass. 304 (2018). *Dental Service of Massachusetts* addressed the question of whether the term “covered persons” as appearing in the statute refers to the employer-organizations that contract with PPAs, or instead refers only to the individuals receiving health insurance coverage.

II. The Dental Service of Massachusetts Decision

The taxpayer-appellant in *Dental Service of Massachusetts* offered dental insurance coverage through preferred provider arrangements. It provided this coverage through Massachusetts-based employers, to individual employees and members of the employees’ families. Although all of the employers with which the taxpayer contracted were headquartered in the Commonwealth during the period in question, some employees did not reside in the Commonwealth. For each of the tax years at issue, the taxpayer originally paid the premiums excise under G.L. c. 176I § 11 on all premiums it received from Massachusetts-based employers. However, the taxpayer later concluded that premiums received from employers for coverage of employees who lived outside of the Commonwealth should have been excluded from the calculation of the excise, and therefore filed applications for abatement. The taxpayer maintained that “covered person” as defined in G.L. c. 176I § 1 (“any policy holder or other person on whose behalf the organization is obligated to pay for or provide health care services”) referred only to the individual(s) receiving benefits.

The Commissioner of Revenue disagreed, and claimed that all premiums collected by the taxpayer from Massachusetts-based employers must be included in the taxpayer’s taxable gross premiums, irrespective of the residency of the individual receiving benefits. The Commissioner argued that the “policy holders” referenced in the definition of “covered person” were the employers, i.e., the holders of the contracts with the taxpayer. In support of this position, the Commissioner referenced, among other things, language in a previous SJC decision, which stated that a “[group health insurance] policy purchaser [i.e., the employer] is known as the policyholder’...”²

The SJC disagreed with the Commissioner and concluded that the term “covered person,” as defined in G.L. c. 176I § 1, refers only to the natural person receiving health care coverage under a policy, including his or her spouse and additional dependents, not the employer-organization with whom the PPA contracts. The SJC noted that the term “covered person” was not used in a manner anywhere in G.L. c. 176I to suggest that it must apply to entities other than natural persons. Furthermore, the SJC found that this interpretation was consistent with the administration of the statute by the Division of Insurance (which interprets the term “covered persons” to mean natural persons in administering reporting requirements for health benefit plans).

III. Application of the Decision

Based on the SJC’s decision, PPAs may exclude from the premiums excise premiums paid by Massachusetts-based employers for coverage of individuals who reside outside of the Commonwealth. All PPAs that receive premiums for coverage of individuals who reside in the Commonwealth must file a Massachusetts Premiums Excise Return and include such premiums when calculating the excise, irrespective of the location of the PPA or the location of the employer that contracted with the PPA.

/s/Christopher C. Harding
Christopher C. Harding
Commissioner of Revenue

CCH:RHF:jt

September 10, 2018

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1. See *also* 830 CMR 176I.1.1(3)(c).

2. *Foster v. Group Health, Inc.*, 444 Mass. 668, 668 n.2 (2005) (citing 1 E.M. Holmes, *Appleman on Insurance* § 2.5 (2d ed. 1996); 1 G. Couch, *Insurance* § 1:8.1 (3d ed. 1995 & Supp. 2004)).

REFERENCED SOURCES:

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