



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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The Honorable Trent Kelly
Member, U.S. House of Representatives
431 West Main Street, Suite 450
Tupelo, MS 38804

Attention:

Dear Representative Kelly:

I am responding to your inquiry dated September 19, 2016, on behalf of the . The board contacted you about establishing a county program to purchase a Medicare supplement plan for eligible county employees wishing to enroll in Medicare. It asks if the county's purchase of a Medicare supplement plan for its employees complies with the Affordable Care Act (ACA).

Employers generally may offer Medicare supplement plans to their employees and comply with the ACA. The market reforms under the ACA impose certain requirements on group health plans (generally, health coverage offered by employers), and failing to satisfy those requirements results in an excise tax under section 4980D of the Internal Revenue Code (the Code.) However, the requirements of the ACA market reforms do not apply to certain "excepted benefits." Included in "excepted benefits" are Medicare supplemental health insurance, as defined under section 1882(g)(1) of the Social Security Act. See section 9832(c)(4) of the Code.

Please note that the ACA provisions for group health plans in the Code do not apply to governmental plans. See section 9831(a)(1) of the Code. However, similar ACA provisions under the Public Health Service Act, which does apply to non-federal governmental plans, apply to state or county plans. Those provisions include a similar exclusion for excepted benefits, including the exclusion for Medicare supplemental

health insurance. The Department of Health and Human Services administers the Public Health Service Act, as applied to non-federal governmental plans.

I hope this information is helpful. If you have any questions, please call me at
or at .

Sincerely,

Christine Ellison, Acting Chief
Health and Welfare Branch
Office of Associate Chief Counsel
(Tax Exempt and Government Entities)