MJ INSURANCE

Legislative Update

Reinsurance Program Changes For 2015

Beginning in 2014, the Affordable Care Act (ACA) requires a three-year transitional reinsurance program to be established in each state. This program is intended to help stabilize premiums for coverage in the individual market during the first three years of Exchange operation (2014 through 2016) when individuals with higher-cost medical needs gain insurance coverage. **This program will impose a fee on health insurance issuers and self-insured group health plans**.

On March 11, 2014, the Department of Health and Human Services (HHS) published its **2015 Notice of Benefit and Payment Parameters Final Rule**, which addresses the transitional reinsurance program. The rule finalizes many of the changes to the reinsurance program that were included in the proposed rule from Nov. 24, 2013.

Exemption for Self-insured, Self-administered Group Health Plans
Under the ACA, "contributing entities" must make reinsurance contributions. A contributing entity is defined as:

- A health insurance issuer; or
- A third party administrator on behalf of a self-insured group health plan.

HHS recognizes that some self-insured group health plans self-administer the benefits and services provided under the plan, and do not use the services of a third party administrator. However, the ACA does not address whether self-insured, self-administered plans are liable for reinsurance contributions.

The proposed rule would modify the following definitions for the 2015 and 2016 benefit years to **exempt certain self-insured, self-administered group health plans** from the reinsurance contribution requirement:

- The term "contributing entity" would exclude self-insured group health plans that do not use a third party administrator in connection with claims processing or adjudication (including the management of appeals) or plan enrollment.
- The phrase "third party administrators on behalf of group health plans" would not include self-insured, self-administered group health plans.

Therefore, under the proposed rule, for the 2015 and 2016 benefit years, a "contributing entity" would mean:

- A health insurance issuer; or
- A self-insured group health plan (including a group health plan that is partially self-insured and partially insured, where the health insurance coverage does not constitute major medical coverage) that uses a third party administrator in connection with claims processing or adjudication (including the management of appeals) or plan enrollment.

The proposed modification for the 2015 and 2016 benefit years would exclude from the requirement to make reinsurance contributions those self-insured plans that **do not use a third party administrator** for their core administrative processing functions—adjudicating, adjusting and settling claims (including the management of appeals), and processing and communicating enrollment information to plan participants and beneficiaries. Self-insured group health plans may continue to use third parties for ancillary administrative support and still qualify as "self-administered" for purposes of the reinsurance program.

The modified definition of "contributing entity" would be effective only for the 2015 and 2016 benefit years. To avoid disruption for plans and issuers, the proposed rule would not change the definition of a "contributing entity" for the 2014 benefit year. That definition will remain as provided in the second final Program Integrity Rule—a health insurance issuer or a self-insured group health plan (including a group health plan that is partially self-insured and partially insured, where the health insurance coverage does not constitute major medical coverage), **regardless of whether the plan uses a third party administrator**.

Reinsurance Contribution Rate for 2015

The reinsurance program's fees are based on a national contribution rate, which HHS will announce annually. For 2014, HHS announced a national contribution rate of $5.25 per month ($63 per year). For 2015, the annual contribution rate would be $44 per enrollee per year.

The national contribution rate is calculated by dividing the sum of three statutory components (the reinsurance payment pool, the U.S. Treasury contribution and administrative costs) by the estimated number of enrollees in plans that must make reinsurance contributions.

In 2015, the ACA requires approximately $8.025 billion to be collected from contributing entities. This includes amounts allocated for reinsurance contributions, contributions to the Treasury and administrative expenses.

HHS plans to establish the uniform reinsurance contribution rate for the 2016 benefit year in the HHS notice of benefit and payment parameters for 2016.

Payment Timing

Under the 2013 final rule, contributing entities would submit an annual enrollment count to HHS no later than Nov. 15 of 2014, 2015 and 2016, based on enrollment data from the first nine months of the year. Within 30 days of this submission or by Dec. 15, whichever is later, HHS would notify each contributing entity of the amount of its required reinsurance contribution. The contributing entity would be required to make its payment within 30 days after the date of HHS' notification.

HHS acknowledged that this process for reinsurance collections would result in substantial upfront payments from contributing entities for the reinsurance program. Therefore, the proposed rule would modify the collection schedule for the program so that reinsurance contributions would be made in two installments—one at the beginning of the calendar year following the applicable benefit year, and one at the end of that calendar year.

For example, the $63 per capita reinsurance contribution for 2014 would be collected in two installments: $52.50 in January 2015 and $10.50 late in the fourth quarter of 2015.

The reinsurance contribution amounts for reinsurance payments and for administrative expenses would be collected earlier in the calendar year and the reinsurance contribution amounts for payments to the U.S. Treasury would be collected in the last quarter of the calendar year.

For the 2015 benefit year, the proposed rule would require the $44 annual per capita contribution rate to be allocated as follows:

- $33 towards reinsurance payments and administrative expenses, payable in January 2016; and
- $11 towards payments to the U.S. Treasury, payable late in the fourth quarter of 2016.

According to HHS, the proposed policy is designed to alleviate the upfront burden of the reinsurance contribution, allowing contributing entities additional time to make the payment.

The proposed change in the collection schedule would not affect the amount of funds collected for reinsurance payments. In addition, the contributing entity would be required to submit an annual enrollment count only once for each benefit year.

For the first installment, following submission of the annual enrollment count (likely by December of the applicable benefit year), HHS would notify a contributing entity of the reinsurance contribution amount allocated to reinsurance payments and administrative expenses to be paid for the applicable benefit year. The contributing entity would then remit this amount within 30 days after the date of the first notification.

For the second installment, in the fourth quarter of the calendar year following the applicable benefit year, HHS would notify the contributing entity of the portion of the reinsurance contribution amount allocated for payments to the U.S. Treasury for the applicable benefit year. A contributing entity would remit this amount within 30 days after the date of this second notification.