Legislative Update

Reporting and Collecting Transitional Reinsurance Fees

The Affordable Care Act (ACA) creates a transitional reinsurance program to help stabilize premiums in the individual market for the first three years of Exchange operation (2014-2016) when individuals with higher-cost medical needs gain insurance coverage. The program imposes a fee on health insurance issuers and self-funded group health plans.

On March 11, 2014, HHS published its **2015 Notice of Benefit and Payment Parameters Final Rule**, which addresses key changes to the transitional reinsurance program for 2015. The final rule:

- Exempts certain self-insured, self-administered plans from the reinsurance fees for 2015 and 2016; and
- Modifies the collection deadlines for the fees to reduce the upfront burden to plans and issuers.

Who must pay the Reinsurance Fees?

Contributions to the reinsurance program are required for health plans (fully insured and self-insured) that provide major medical coverage. Certain types of plans are exempt from the requirement to pay reinsurance fees, such as health flexible spending accounts (FSAs), health reimbursement arrangements (HRAs) that are integrated with major medical coverage, health savings accounts (HSAs) and coverage that consists solely of excepted benefits under HIPAA (for example, limited-scope dental and vision plans).

For insured health plans, the issuer of the health insurance policy is required to pay the reinsurance fees. For self-insured health plans, the plan sponsor is liable for paying the reinsurance fees, although a third-party administrator (TPA) or administrative-services only (ASO) contractor may be used to make the fee payment at the plan's direction.

The reinsurance program's fees are based on a national contribution rate. 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.

Why must Employer-Sponsored Plans Pay a Fee that will go to Insurers that Provide Individual Health Policies?

ACA Section 1341(c)(1)(A) states that the purpose of the reinsurance contributions is "to help stabilize premiums for coverage in the individual market" during the first three years the individual Exchanges are in operation, "when the risk of adverse selection related to new rating rules and market changes is greatest." Insurers that end up covering more than their share of high-cost individuals in the Exchange will be eligible for reimbursement of a percentage of claims that exceed a specified attachment point.

What is the Annual Amount of the Reinsurance Fee?

The annual per participant fee for 2014 is $63 ($5.25/month) and will decrease in 2015 and 2016. The rate was calculated by dividing the 2014 annual amount of $12 billion (set by the ACA) by the estimated number of enrollees in plans required to make transitional reinsurance contributions. The $63 rate is a national uniform contribution rate and does not vary by state.

For 2015 the statutory amount is $8 billion and the annual per participant fee is $44. For 2016 the annual amount is $5 billion and the annual per participant fee has not yet been determined, but is estimated to be approximately $26-$28 based on the calculation methodology.

What Plan Participants are Counted in Calculating the Annual Fee?

Major medical plans must count enrolled employees and their enrolled spouses and dependents, COBRA "qualified beneficiaries," and enrollees in employer-sponsored retiree medical plans who are not yet eligible for Medicare. Plans do not have to count retirees who are enrolled in Medicare and also have supplemental employer-provided coverage, nor do they count individuals who are enrolled in both Medicare and employer-sponsored coverage for whom Medicare pays primary. (An example would be a COBRA QB who is also enrolled in Medicare.)

How do Employers Calculate Average Covered Lives?

The regulations provide a choice of the following methods to determine the average number of covered lives. These methods are very similar to those for calculating the PCORI fee, except that these methods are based on the first three quarters of a calendar year (as opposed to all four quarters of a plan year, the foundation of the PCORI fee).

- **Actual Count Method** - Calculate the sum of the lives covered for each day of the first nine months of the year and divide that sum by the number of days in the first nine months;
- **Snapshot Method** - Add the total number of covered lives on any date during the same corresponding month in each of the first three quarters (for example January 1, April 1 and July 1) of the calendar year, and divide that total by the number of dates on which a count was made;
- **Snapshot Factor Method** - This method is the same as the aforementioned Snapshot Method, except that for each given date, add the number of covered employees with self-only coverage and the number of covered employees with coverage other than self-only and multiply that latter number by 2.35; or
- **Form 5500 Method** - This method is based on a formula that includes the number of participants actually reported on the Form 5500 for the applicable self-insured health plan for the last applicable plan year. In particular, the average number of lives covered under a plan offering only self-only coverage equals the sum of total participants covered at the beginning and the end of the plan year, as reported on the Form 5500, and divided by 2. However, the average number of lives covered under a plan offering coverage for employees and their dependents equals the sum of total participants covered at the beginning and the end of the plan year, as reported on the Form 5500.

What should Employers do to prepare?

Employers with self-funded group health plans must:

- Determine which plans are subject to the reinsurance fee (including retiree-only plans) that provide major medical coverage
- Determine which individual must be covered (including COBRA participants)
- Determine which counting method to use (be consistent, document methodology and retain records for a minimum of 10 years)
- Determine if the employer or the TPA/ASO carrier will submit enrollment information and payment

How will contributing entities report the headcount to HHS?

- Contributing entities (insurers or self-funded plan sponsors) will need to determine the average number of covered lives based on information from January 1 through September 30.
- Register on www.pay.gov to:
    - Report basic company information and contact information

- Enter enrollment information on the ACA Transitional Reinsurance Program Annual Enrollment Form
- Attach support documentation as required
- Attest that the information is accurate
- Schedule payment

Please note, however, that while you are currently able to complete registration for your plan, the www.pay.gov website does not currently have the necessary form available to actually complete the filing itself and provide a date to submit your fee.

How will the Reinsurance Fee be Collected?

The reinsurance fee will be collected by the Department of Health and Human Services (HHS). Recent guidance has changed the timing of when the fee will be due. Initial guidance provided for quarterly collection, which was subsequently revised to annually (due in January following the applicable year), and guidance issued in November 2013 made additional changes. As of the date of this article, the process and the timeline are as follows:

- **By November 15, 2014:** Contributing entities (i.e., plans and insurers) must send HHS headcount information, based on the first three quarters of the calendar year.
- Fee may be collected in one or two installments:
  - One installment: Payment due **January 15**
  - Two installments: Payments due **January 15** and **November 15**

The same timeframes apply for 2015 and 2016.

Is the Reinsurance Fee a Tax-Deductible Expense?

Yes, the fee generally is a tax-deductible expense to plan sponsors and insurers. IRS FAQs issued November 18, 2013 (at http://www.irs.gov/uac/Newsroom/ACA-Section-1341-Transitional-Reinsurance-Program-FAQs) specifically allow plan sponsors and insurers to treat the contributions as "ordinary and necessary business expenses," which means they are generally a tax-deductible expense, subject to any applicable disallowances or limitations under the Tax Code. The IRS FAQs also note that the Department of Labor has said the reinsurance contributions are a permissible plan expense under ERISA Title I because the payment is a required plan expense under the ACA.

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