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ATTORNEYS

Health Care Reform Management Alert Series

ACA Regulations Issued on TRP Fees and HIP Fees

Issue 56

This is the fifty-sixth issue in our series of alerts for employers on selected topics on health care reform. (Click here to access our general Summary of Health Care Reform and other issues in this series.) This series of Health Care Reform Management Alerts is designed to provide an in-depth analysis of certain aspects of health care reform and how it will impact your employer-sponsored plans.

On March 1, 2013, the Department of Health and Human Services (HHS) released final regulations on the Transitional Reinsurance Program (TRP) fee. Note that this issue supplements *Issue 47* which addressed both the Patient Centered Outcomes Research Institute (PCORI) fee and the TRP fee payable by health insurance issuers and sponsors of self-funded group health plans. In general, the final regulations adopt the proposed regulations with respect to the TRP fee, but the final regulations provide some helpful clarification.

The Internal Revenue Service also proposed regulations on another annual fee imposed by the Affordable Care Act (ACA) on certain health insurance insurers, but not on self-funded plans.

TRANSITIONAL REINSURANCE PROGRAM (TRP) FEE

Contributing Entites

Each contributing entity (i.e. each health insurance issuer or self-insured group health plan) must pay an annual TRP fee based on the average number of covered lives. The final regulations clarify that contributing entities only have to pay a TRP fee for plans that provide them with major medical coverage, and that the following individuals will be counted as a covered live and subject to the TRP fee to the extent the plan provides major medical coverage:

- COBRA beneficiaries
- Collectively bargained employees

Under the final rules, plans that provide expatriate health coverage or only prescription drug coverage do not have to pay a TRP fee. In addition, the final rules clarify the proposed treatment of an individual that has both *Medicare* coverage and employer-provided group health coverage. If Medicare is the primary payor, the individual would not be counted for purposes of the TRP fee. Thus, retirees and other former employees are only counted for the TRP fee to the extent their employer-provided coverage is primary to Medicare, based on the application of Medicare Secondary Payor rules.

Notably, HHS pointed out that several commenters had asked for clarification regarding whether an employer could pass the

TRP fee through to its enrollees in a self-funded group health plan. HHS did not, however, provide clarification and simply responded that the "final rule does not address how an employer would meet its reinsurance contribution requirements".

Fee Amount

The final rules make a technical correction to the proposed rules and provide that HHS will notify a contributing entity of the contribution amount to be paid within 30 days (not 15 days) after the contributing entity submits its annual enrollment data to HHS.

The final rules reiterate that the estimated fee for 2014 will be $63.00 per year ($5.25 per month).

Counting Methods

The final rules amend the procedures for counting lives and the aggregation rules for multiple plans maintained by the same plan sponsor. If an employer maintains two or more plans that collectively provide major medical coverage for the same covered lives, then those plans must be aggregated and treated as single plan. However, in determining the number of covered lives under a plan that offers both self-funded and insured coverage options providing major medical coverage to different groups, in order to avoid "double counting," employers may disaggregate the plan and treat the options as separate plans for counting purposes.

Covered lives will be counted on a calendar year basis regardless of whether plans maintain a non-calendar year.

HEALTH INSURANCE PROVIDERS (HIP) FEE

Beginning in 2014, the ACA imposes another annual fee on entities engaged in the business of providing health insurance. The applicable amount specified by statute is to be apportioned among all covered entities based on a ratio designed to reflect their relative market share of U.S. health insurance business. The proposed regulations offer guidance regarding who must pay the fee, how the fee will be determined, and when it will be due.

Although the fee is not applicable to self-funded plans, it will likely be passed through as a premium increase for insured plans.

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Joy Sellstrom is senior counsel in Seyfarth's Chicago office. If you have questions regarding fees imposed by the ACA or health care reform in general, please do not hesitate to contact the Seyfarth Shaw LLP attorney with whom you usually work, or Joy at *jsellstom@seyfarth.com*.

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