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COMMISSIONER



STATE OF DELAWARE
DEPARTMENT OF INSURANCE

DOMESTIC AND FOREIGN INSURERS BULLETIN NO. 113

TO: INSURANCE CARRIERS WHO ISSUE HEALTH BENEFIT PLANS IN DELAWARE

RE: IMPLEMENTATION OF THE DELAWARE HEALTH INSURANCE INDIVIDUAL MARKET STABILIZATION REINSURANCE PROGRAM ASSESSMENT

DATED: December 12, 2019

This Bulletin sets forth the procedures for the collection of the assessment that provides, in part, the funding mechanism for the Delaware Health Insurance Individual Market Stabilization and Reinsurance Program. This program was established under 16 *Del.C.* § 9903 *et seq.* and 18 *Del.C.* § 8701 *et seq.* (collectively, the Act).

Background:

On August 20, 2019, the Federal Centers for Medicare and Medicaid Services (CMS) approved Delaware's application to establish a reinsurance program under Section 1332 of the Patient Protection and Affordable Care Act (ACA). The Delaware Health Insurance Individual Market Stabilization and Reinsurance Program is expected to lower premium rates for individual health insurance plans by approximately 20 percent and to improve the morbidity of the individual single risk pool by as much as 0.6 percent.

CMS approved Delaware's reinsurance program to take effect for the 2020 plan year and to remain in effect until 2025.

The assessment will be collected by the Delaware Department of Insurance, as authorized by 18 *Del.C.* § 8701 *et seq.* The Delaware Health Care Commission (DHCC) will use these funds to administer the State's reinsurance program as authorized by 16 *Del.C.* § 9903 *et seq.*

Who is subject to the assessment?

The assessment must be paid by any health insurance carrier that provides health insurance in this State. "Health insurance carrier" or "carrier" includes an insurance company, health service corporation, health maintenance organization, managed care organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.

NOTE: This Bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties, or privileges, nor is it intended to provide legal advice. Readers should consult applicable statutes and rules and contact the Delaware Department of Insurance if additional information is needed.

The entities providing insurance under the following types of plans do not meet the definition of carrier: plans of health insurance or health benefits designed for issuance to persons eligible for coverage under Titles XVIII, XIX, and XXI of the Social Security Act (42 U.S.C. §§ 1395 et seq., 1396 et seq., and 1397aa et seq.), known as Medicare, Medicaid; Chapter 52 of Title 29 of the Delaware Code; or any other similar coverage under state or federal governmental plans.

Which products or lines are subject to the assessment?

Any carrier who is providing health insurance in this state (other than those products specifically excluded under 18 Del.C. § 8702(c)) is required to pay the assessment. The definition of carrier does not distinguish between group and individual insurance.

The Act does *not* apply to stand-alone dental insurance, stand-alone vision insurance, long-term care insurance, disability income insurance, or accident-only insurance.

How is the assessment calculated?

The assessment is equal to 2.75 percent of all amounts used to calculate an entity's Delaware premium tax liability or the entity's premium tax exemption value, for products subject to the Act. *See* 18 Del.C. § 8703(b).

However, in the event that the federal government reinstates the Health Insurance Providers Fee as defined under Section 9010 of the ACA for a particular calendar year, Delaware is required to reduce its assessment for the corresponding calendar year to 1 percent on all amounts used to calculate an entity's Delaware premium tax liability or the entity's premium tax exemption value for products subject to the Act. *See* 18 Del.C. § 8703(b).

The percentage for assessment year 2020 is 1 percent.

The attached form and instructions include precise methodology for this calculation.

How will the premiums be allocated to Delaware?

Carriers should employ the *same* methodology that is used for premium tax allocation pursuant to 18 Del.C. § 702.

When will the amount be assessed and when is the amount due and payable?

The assessment payment is due by March 1 of the calendar year. Entities subject to the assessment should submit the attached form and remit payment no later than this date.

A nonprofit health service plan subject to this assessment should use the premium tax exemption value from their first quarter report for the relevant plan year, subject to any exemptions or exclusions in the Act, to determine its assessment base.

Is there any penalty or fee imposed for late payment or failure to pay?

Yes, penalties and interest will be assessed pursuant to the Department's authority in 18 *Del.C.* § 311.

Is the assessment tax deductible for entities subject to the Act?

The Federal Internal Revenue Service has confirmed to other states who are implementing a 1332 Waiver reinsurance program of their own that the assessment will be treated, for federal tax purposes, as either a deductible expense pursuant to 26 U.S.C.A § 162 and I.R.C. § 162 or a deductible tax pursuant to 26 U.S.C.A. § 164 and I.R.C. § 164 for those entities carrying on a trade or business.

When will the DOI distribute the funds to the DHCC?

The DOI anticipates that the assessment will be distributed to the DHCC as a lump sum no later than April 15th of the calendar year.

How would the reinsurance program work?

Insurers who offer coverage in Delaware's individual market would be reimbursed by the reinsurance program for a percentage of the annual claims which they incur on a per member basis between a specified lower threshold ("attachment point") and upper threshold ("reinsurance cap"), to be determined each year by the DHCC.

Due to these reimbursements and the anticipated improvement in morbidity, it is expected that insurers will incur lower costs on their individual health insurance plans each year, and that those lower costs will then be required to be passed on to consumers in the form of lower premium rates (i.e., prior to the application of federal premium tax credits).

Who will likely benefit from the reinsurance program?

Consumers in the individual market who do not receive federal premium tax credits (PTCs) would particularly benefit from the lower premium rates.

Consumers in the individual market who do receive PTCs would be expected to experience little to no impact from the lower premium rates. This is because the PTCs are set such that eligible individuals pay no more than a specified percentage of their income for the second-lowest cost silver plan, regardless of the cost of the second-lowest cost silver plan. However, if the lower premium rates for the second-lowest cost silver plan were to be less than the specified percentage of income for certain individuals, they would pay the lower amount.

All consumers in the individual market are expected to benefit from increased stability due to an expectation that overall membership in the single risk pool would increase due to lower premium rates.

Please direct questions to doi-invoices@delaware.gov. Include **Attn: 1332 Waiver Assessment Payment** in the subject line.

This Bulletin shall be effective immediately and shall remain in effect unless withdrawn or superseded by subsequent law, regulation or bulletin.

A handwritten signature in blue ink that reads "Trinidad Navarro". The signature is written in a cursive style and is positioned above a horizontal line.

Trinidad Navarro
Delaware Insurance Commissioner

Assessment Form Instructions

Delaware Health Insurance Individual Market Stabilization Reinsurance Program

Total Direct Written Premiums: Report the gross amount of all health and/or accident & health premiums reported in Delaware. The total should equal the company's premiums reported in the annual statement filed with the NAIC during the applicable plan year and the schedule referenced in Note 1 of the form.

Excluded Premiums: Excluded premiums include those expressly set forth by federal law and regulation (see, for example, ACA § 9010(h)(3) and 26 C.F.R. § 57.2), premiums for federal programs not subject to assessment in Delaware, and premiums expressly excluded in 18 *Del. C.* § 8702(b). Excluded premiums should be specifically reported on the form in the column provided.

How is the assessment due calculated? For years in which the federal government reinstates the Health Insurance Providers Fee defined under Section 9010 of the ACA, use 1 percent. For all other years, use 2.75 percent. Multiply the applicable percent by the net total premium (total premium minus excluded premiums).

Delaware Health Insurance Individual Market Stabilization and Reinsurance Program Assessment Form

Company Name: _____		
NAIC Number _____		
Company Address _____		
As Reported Annual Statement	Amount	
Total Direct Premiums Written		
Excluded Premiums		
Medicare		
Medicare Supplemental		
Federal Employees Health Benefit Plans		
Stand-alone Dental Insurance		
Stand-alone Vision Insurance		
Accident Only		
Disability Only		
Long Term Care		
Other-		
Other-		
Other-		
Other-		
Total Excluded Premiums		
Assessable Premiums		Total Direct Premiums Written less Total Excluded Premiums
Assessment Factor		For years in which the federal government reinstates the Health Insurance Providers Fee defined under Section 9010 of the ACA, use 1 percent. For all other years, use 2.75 percent.
Assessment Declared		Assessable Premiums multiplied by Assessment Factor
Name and title of person responsible for filling out this form	Name _____ Title _____	
Contact information for person responsible for tilling out this form	Telephone number _____	
	Email address: _____	