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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**

REVISED: **March 3, 2020, November 6, 2025, and March 12, 2026**

REISSUED: **December 3, 2020, November 30, 2021, February 7, 2023, December 5, 2023, November 25, 2024, and November 2, 2026**

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 (the Reinsurance Program). This program was established under 16 *Del. C.* § 9903 *et seq.* and 18 *Del. C.* § 8701 *et seq.* (collectively, the Act).

This Bulletin is being reissued to remind applicable carriers that the assessment is due by **March 1, 2027**, and to emphasize the Reinsurance Program's continued importance in supporting affordability and market stability following the December 31, 2025 expiration of the Advance Premium Tax Credits (APTCs), which had expanded eligibility and increased subsidy amounts.

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). CMS approved Delaware's Reinsurance Program to take effect for the 2020 plan year and to remain in effect until 2025. Delaware submitted a request to extend its Reinsurance Program on April 2, 2024, followed by an updated submission on May 21, 2024. On July 31, 2024, CMS approved the extension, extending the Reinsurance Program waiver period from January 1, 2025 to December 31, 2029, as detailed here.

The assessment is collected by the Delaware Department of Insurance, as authorized by 18 *Del. C.* § 8701 *et seq.* The Delaware Health Care Commission (DHCC) uses 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. 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).

The **Further Consolidated Appropriations Act, 2020** repealed the federal Health Insurance Providers Fee (Section 9010 of the ACA) for calendar years beginning after December 31, 2020, and Delaware adopted corresponding technical updates to its Insurance Code in 2022.

Accordingly, Delaware now imposes a single 2.75% assessment on the amounts used in premium tax or exemption calculations for products subject to the Act.

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 annually. Entities subject to the assessment should submit the attached form and remit payment no later than **March 1, 2027**.

A nonprofit health service plan subject to this assessment should use the premium tax exemption value from its 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.* § 329.

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

The Federal Internal Revenue Service (IRS) 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. While this treatment is generally accepted, the IRS has not issued formal guidance specifically addressing the tax treatment of assessments under Section 1332 waiver reinsurance programs. Carriers are encouraged to consult with their tax advisors to determine the appropriate classification based on their specific circumstances and accounting practices.

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 15 of the applicable calendar year.

How does the Reinsurance Program work?

Insurers who offer coverage in Delaware's individual market are 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, regardless of APTC availability.

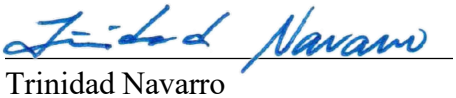
Expected Consumer Impact of the Reinsurance Program?

Consumers in the individual market who do not receive APTCs particularly benefit from lower premium rates, as they bear the full cost of coverage. By offsetting high-cost claims, the Reinsurance Program reduces gross premiums across all metal tiers, making coverage more affordable for unsubsidized enrollees. With the expiration of the temporary federal

enhancements to APTCs, premium reductions now play a more significant role in maintaining affordability for consumers who receive only the standard ACA subsidies. All consumers in the individual market are expected to continue to benefit from increased market stability, supported by an expectation that overall membership in the single risk pool will continue to increase as premiums decline.

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.



Trinidad Navarro
Delaware Insurance Commissioner

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.

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, 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? Multiply 2.75 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		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 filling out this form		Telephone number_____ Email address _____