Bernie Lowe & Associates, Inc.
"Beyond the Product"

Health Care Reform Update

IMPORTANT NOTICE REGARDING HEALTHCARE REFORM

Update #5 **December, 2012**

Health Plan Reinsurance Contributions and Premium Stabilization Programs

The Department of Health and Human Services (HHS) has issued proposed regulations regarding the Temporary Reinsurance Program for Health Plans. This program, proposed in Health Care Reform legislation effective January 1, 2014, creates a temporary reinsurance and risk corridor program to give insurers participating in the state based exchanges payment stability as insurance market reforms begin.

Plan sponsors, insurers, and TPAs of all group health plans should pay close attention to these proposed rules as this program calls for a contribution to be made by health insurers and self-insured group health plans to help stabilize premiums for coverage in the individual market from 2014 through 2016. Brief descriptions of the major provisions are listed below.

Proposed Annual Contribution

The contribution will be based on collecting $12 billion for 2014, $8 billion for 2015 and $5 billion for 2016. The $12 billion for 2014 includes $2 billion for the US Treasury. HHS is reviewing to determine whether statutory requirements would allow them to delay collection of this $2 billion until 2016.

To collect the $12.02 billion for 2014, HHS is proposing a national uniform contribution rate of $63.00 per covered life per year ($5.25 per month), payable annually. The regulations provide several methods for counting covered lives based on the methods used for the PCORI fee.

Contributing Entities

The contribution will apply to "major medical" coverage only, which is defined as coverage for a broad range of services and treatments, including diagnostic, preventive, medical, and surgical services provided in inpatient, outpatient, and emergency room settings. Contributions would not be required from HRAs that are integrated with a group health plan or from HSAs, (the medical plan associated with the HRA or HSA would pay contributions). Contributions are not required for health FSAs, EAPs, or wellness programs that do not provide medical coverage, or for coverage that consists solely of excepted benefits. Also, group health plans would not pay a contribution for a member where Medicare is the primary payer.

In separate FAQ guidance, the IRS has indicated that insurers and plan sponsors generally can deduct reinsurance contributions as ordinary and necessary business expenses. According to HHS, the DOL has advised that these contributions would be a valid plan expense under ERISA.

Collection of Contributions

For fully insured plans, the insurer is liable for the contribution. For self-insured plans, the proposed regulations state the plan is ultimately liable for the contributions; however a TPA can be used to remit the contributions on the plan's behalf. This is a change from the initial legislation.

Health Plan Reinsurance Contributions and Premium Stabilization Programs

HHS will collect contributions for both fully insured and self-insured plans, even where a state has its own reinsurance program. Starting in 2014, the contributing entity (insurer, TPA or health plan) must report the covered lives to HHS by November 15, 2014. HHS will provide the contributing entity the amount of its contribution by December 15, 2014. The contribution will be due within 30 days after the contributing entity receives the contribution notice.

Under limited circumstances, states can collect additional reinsurance contributions to provide enhanced reinsurance or to pay administrative expenses. However, the preamble to the regulations state that nothing in the proposed regulations gives states the authority to collect these surcharges from self-insured ERISA plans and notes that federal law generally preempts state laws that relate to ERISA plans.

Reinsurance Payments

The contributions would be used to cover claims in excess of a specified attachment point for individual policies subject to health insurance market reforms. In a change from previous regulations, contributions would be treated as a national pool and used to provide reinsurance on a per-policy basis without regard to where the contribution was collected.

Other areas of the guidance issued by Health and Human Services on December 7, 2012, affects insurers participating in Exchanges; items such as proposed regulations regarding the premium stabilization programs (risk adjustment, reinsurance, and risk corridors). The regulations also address exchange-based coverage, cost-sharing reductions under qualified health plans, advance payment of the premium tax credit, Small Business Health Options Program (SHOP) operations and user fees. Proposed regulations also address changes to the medical loss ratio (MLR) rules, revising the timeline for reporting and rebates beginning with the 2014 reporting year. This will provide insurers time to account for premium stabilization payments and receipts in the MLR calculation.

You can find more detail on these regulations at:

http://www.gpo.gov/fdsys/pkg/FR-2012-12-07/pdf/2012-29184.pdf

http://www.irs.gov/uac/Newsroom/ACA-Section-1341-Transitional-Reinsurance-Program-FAQs