

## Part III – Administrative, Procedural, and Miscellaneous

### Health Insurance Providers Fee; Procedural and Administrative Guidance

Notice 2014-24

#### SECTION 1. PURPOSE

This notice provides a temporary safe harbor for covered entities that report direct premiums written for expatriate plans on a Supplemental Health Care Exhibit (SHCE). A covered entity may apply this temporary safe harbor for purposes of reporting direct premiums written on Form 8963, Report of Health Insurance Provider Information, which is used to calculate the fee imposed by § 9010 of the Affordable Care Act.

#### SECTION 2. BACKGROUND

Section 9010 of the Patient Protection and Affordable Care Act (PPACA), Public Law 111-148 (124 Stat. 119 (2010)), as amended by section 10905 of PPACA, and as further amended by section 1406 of the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act or ACA), imposes an annual fee on covered entities engaged in the business of

providing health insurance for United States health risks. The fee is a fixed amount allocated among all covered entities in proportion to their relative market share as determined by each entity's net premiums written for the data year, which is the year immediately preceding the year in which the fee is paid (the year in which the fee is paid is the fee year).

Section 9010(b)(3) requires the Secretary of the Treasury (Secretary) to calculate the amount of each covered entity's annual fee. For this purpose, § 9010(g)(1) requires each covered entity to report to the Secretary its net premiums written for health insurance for any United States health risk for the data year. Section 9010(d) defines United States health risk to mean a health risk of any individual who is: (1) a United States citizen; (2) a resident of the United States (within the meaning of § 7701(b)(1)(A)); or (3) located in the United States, during the period such individual is so located.

The Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) proposed the Health Insurance Provider Fee regulations (REG-118315-12, 78 FR 14034) on March 4, 2013, and issued final regulations (T.D. 9643, 78 FR 71476) on November 26, 2013, providing guidance regarding the § 9010 fee. The regulations require each covered entity to annually report its net premiums written for health insurance of United States health risks during the data year to the IRS by April 15th of the fee year on Form 8963, Report of Health Insurance Provider Information. For covered entities that file the SHCE with the National Association of Insurance Commissioners (NAIC), net premiums written for health insurance generally will equal

the amount reported on the SHCE as direct premiums written minus medical loss ratio (MLR) rebates with respect to the data year, subject to any applicable exclusions under § 9010. Form 8963 accordingly requires reporting of direct premiums written for purposes of determining net premiums written.

The regulations do not provide specific rules for expatriate policies. The MLR final rule issued by HHS (MLR final rule) defines expatriate policies as group health insurance policies that provide coverage to employees, substantially all of whom are: (1) working outside their country of citizenship; (2) working outside their country of citizenship and outside the employer's country of domicile; or (3) non-U.S. citizens working in their home country. 45 CFR 158.120(d)(4).

The SHCE includes separate reporting for expatriate plans, which are defined by reference to the definition of expatriate policies in the MLR final rule. Section 57.4(b)(2) of the final regulations provides that the entire amount reported as direct premiums written on the SHCE (including direct premiums written for expatriate plans) will be considered to be for United States health risks unless the covered entity can demonstrate otherwise.

The preamble to the final regulations notes that commenters expressed concern regarding the application of this presumption to expatriate policies. The preamble explains that Treasury and the IRS considered methods for a covered entity to account for its expatriate policies, but did not identify a method that would be verifiable and administrable. Treasury and the IRS are continuing to examine this issue.

Section 6055 and the regulations thereunder require every person that provides minimum essential coverage (as defined in § 5000A(f)) to an individual to report to the IRS information about the coverage, including the name, address, and taxpayer identification number (TIN) of each individual covered under the policy. The data collected pursuant to § 6055 ultimately could provide insurers with information they need to determine more precisely the health risks covered by their expatriate plans. Notice 2013-45, 2013-1 IRB 116, however, delays the reporting required under § 6055 until 2016 for coverage in 2015.

In the interim, this notice provides a temporary safe harbor for 2014 and 2015 for a covered entity that reports direct premiums written for expatriate plans on its SHCE that include coverage of at least one non-United States health risk.

### SECTION 3. TEMPORARY SAFE HARBOR

Treasury and the IRS have received comments providing general data regarding expatriate plans. While the data is not exhaustive, based on an analysis of that data, Treasury and the IRS are providing a temporary safe harbor that will allow a covered entity to treat 50% of certain premiums written for expatriate plans as being attributable to non-United States health risks. Because information collected pursuant to § 6055 could provide more detailed information on the health risks covered by these plans, this safe harbor only applies for fee years 2014 and 2015.

#### .01 Temporary Safe Harbor Method.

A covered entity that satisfies the requirements of § 3.02 will be considered to have rebutted the presumption in § 57.4(b)(2) that the entire amount of direct premiums

written reported on its SHCE is for United States health risks. In that event, the covered entity may, for fee years 2014 and 2015, treat 50% of the aggregate dollar amount of its direct premiums written for expatriate plans as reported on its SHCE (including the amounts for all members of the covered entity's controlled group, if applicable) as direct premiums written for health risks that are not United States health risks and may exclude this amount in reporting direct premiums written on Form 8963.

.02 Temporary Safe Harbor Requirements.

(1) The covered entity (including controlled group members, if any) files one or more SHCEs with the NAIC reporting direct premiums written for expatriate plans (defined by reference to the definition of expatriate policies in the MLR final rule, which is used for purposes of the SHCE).

(2) The covered entity's aggregate direct premiums written for expatriate plans reported on its SHCE(s) include coverage of at least one non-United States health risk.

(3) The covered entity (or designated entity, in the case of a controlled group) attaches a statement to its Form 8963, Report of Health Insurance Provider Information, certifying the information described in § 3.03.

.03 Temporary Safe Harbor Certification.

A covered entity using the temporary safe harbor must certify the following in a statement described in §3.02(3):

(1) The covered entity's aggregate direct premiums written for expatriate plans reported on its SHCE(s) include coverage of at least one non-United States health risk.

(2) The covered entity is relying on the temporary safe harbor provided in Section 3 of Notice 2014-24.

(3) The aggregate dollar amount of direct premiums written for expatriate plans reported on its SHCE(s) for that covered entity (including the amounts for all members of the controlled group, if applicable).

(4) The covered entity has excluded 50% of this aggregate amount in determining the amount of direct premiums reported on Form 8963 pursuant to Section 3.01 of Notice 2014-24.

(4) Example.

Company X, the designated entity of a controlled group, and X's controlled group members (collectively, X Group) reported \$1 million in direct premiums written for expatriate plans, in the aggregate, on their SHCEs for 2014. X Group determines that at least one of its expatriate plans covers at least one non-United States health risk. X Group intends to use the temporary safe harbor described in this notice for purposes of reporting on Form 8963. For the 2014 fee year, Company X may reduce the amount of direct premiums written reported for X Group on Form 8963 by \$500,000 provided it attaches the following statement to its Form 8963:

Company X hereby declares that: (1) the aggregate direct premiums written for expatriate plans reported on the X Group SHCEs for 2014 include coverage of at least one non-United States health risk; (2) X Group is relying on the temporary safe harbor provided in Section 3 of Notice 2014-24; (3) X Group reported an aggregate of \$1,000,000 in direct premiums written for expatriate plans on its

2014 SHCEs; and (4) X Group excluded 50% of this amount, or \$500,000, in determining the aggregate amount of direct premiums written for all X Group members reported on Form 8963.

#### SECTION 4. EFFECTIVE/APPLICABILITY DATES

This notice is effective March 28, 2014 and applies only to fee years 2014 and 2015.

#### SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Charles J. Langley, Jr. of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, please contact Mr. Langley at (202) 317-6855 (not a toll-free call).