August 7, 2020

Federal Health Insurance Providers Fee

Section 9010 of the Affordable Care Act (ACA) imposes a fee on covered entities engaged in the business of providing health insurance in the United States.

Covered entities include any entity with net premiums for the year that is a health insurance issuer, a health maintenance organization, an insurance company, an issuer that provides insurance under Medicare Advantage, Medicare Part D, or Medicaid, or non-fully insured multiple employer welfare arrangements. The fee is not imposed on self-insured employer health plans, government entities, certain non-profits, or voluntary employee beneficiary associations.

The annual fee assessed on a covered entity is equal to the covered entity's net premiums as a ratio to the 'applicable amount,' calculated based on data from the preceding plan year. The applicable amount is the aggregate fee amount for all entities covered under section 9010. The average fee has been estimated to amount to 2 - 3% of premiums.

The fee is a nondeductible excise tax and may not be deducted from a for-profit entity's federal income tax liabilities.

Fee Year	Applicable Amount
2014	$8,000,000,000
2015	$11,300,000,000
2016	$11,300,000,000
2017	$13,900,000,000
2018	$14,300,000,000
2020	$15,500,000,000

Covered entity's net premiums written during the data year:	% of net premiums that are taken into account for calculating the fee:
Up to $25,000,000	0%
Between $25,000,000 and $50,000,000	50%
More than $50,000,000	100%

**For non-profit entities, 50% of remaining net premium is used to calculate the fee owed.*

Collection: The fee was collected from 2014 through 2016. There was a moratorium on collection in 2017. The fee was again collected in 2018 but suspended for plan year 2019 by H.R. 195 (Suspension of Certain Health-Related Taxes). The fee is being collected for the last time in 2020 as it was repealed by the Further Consolidated Appropriations Act in 2020, effective January 1, 2021.

State Replacements: Four states have enacted regulations to replace federal health insurance provider fee with a state assessment:

- **Colorado [*SB 20-215 (2020)*] –** Colorado enacted legislation establishing a reinsurance program for years 2020 and 2021 and permitted the Colorado insurance commissioner to assess insurers if Congress suspended the fee. Colorado replaced this taxing language with legislation in 2020 that assess a 1.15% fee on non-profit health carrier premiums and 2.1% on for-profit health

carrier premiums beginning in 2021. The fee will be used to fund the state's reinsurance program, as well as for establishing subsidy programs for Coloradans who receive APTCs and for those who are not eligible for APTCs or Medicaid.

- **Delaware [*18 Del. Code Chapter 87*]–** Delaware also enacted legislation and was approved for a federal 1332 waiver in 2019 to establish a state-based reinsurance program to run from 2020-2024. Funding for the program comes from a state assessment on health insurance premiums equal to 2.75% of premiums in years in which the fee is not assessed and 1% of premiums in years in which the federal fee is assessed. The Delaware assessment does not apply to Medicaid plans.

- **Maryland [*MD Ins. Code § 6-102.1*] –** Maryland enacted legislation and was approved for a federal 1332 waiver in 2018 to establish a state-based reinsurance program to run from 2019-2023. Funding from the program comes from an annual assessment on insurers and managed care organizations, set at 2.75% of premiums in 2019 to mirror the federal fee that was suspended for that year. The assessment drops to 1% for 2020-2023, as it was assumed the fee would be reinstated in 2020 at the time the state law was enacted.

- **New Jersey [*A4389 (2020)*] –** On July 30th, 2020, New Jersey enacted Assembly Bill 4389 to establish a 2.5% assessment on the net premiums of health insurance entities. The assessment was designed specifically to replace section 9010 of the ACA at the state level, and applies to insurance companies regulated by the state, including Multiple Employer Welfare Arrangements (MEWAs) and dental service corporations (DSCs) that were registered with the state at the time of enactment of the legislation (the assessment does not apply to MEWAs or DSCs registered after enactment of the assessment). The assessment is to be used to fund a state-based subsidy for individuals earning below 400% of the Federal Poverty Level and the state's reinsurance program.