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Proposed Regulations Refine “Net Premiums Written”

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Section 9010(b) of the Patient Protection and Affordable Care Act (ACA) requires the Secretary to determine the annual health insurer fee for each covered entity based on the ratio of the covered entity’s net premiums written to the aggregate premiums written by all covered entities.¹ Section 9010 does not define the term “net premiums written.”

Current regulations (TD 9643; 78 FR 71476 (Nov. 29, 2013)) define net premiums written as premiums written, including reinsurance premiums written, reduced by reinsurance ceded, and reduced by ceding commissions and medical loss ratio (MLR) rebates with respect to the data year. Treas. Reg. § 57.2(k).

Comments received by the IRS and Treasury have requested (1) clarification that premium adjustments related to retrospectively rated contracts be taken into account in determining a covered entity’s net premiums written and (2) clarification regarding the treatment of risk adjustment payments under Section 1343 of the ACA.

Proposed regulations released in December 2016 address these comments, and also impose an electronic filing requirement for IRS Forms 8963. Prop. Reg. § 57.2 (REG-134438-15 (Dec. 9, 2016)) would refine the definition of net premiums written; Prop. Reg. § 57.3 (REG 123829-16 (Dec. 9, 2016)) would require electronic filing of Form 8963 for certain health insurers. These proposed regulations would apply to any fee that is due on or after Sept. 30, 2018, and any Form 8963 filed after Dec. 31, 2017 for covered entities reporting more than \$25 million in net premiums written.

PROP. REG. § 57.2

1. Retrospective Premium Adjustments

To mitigate covered entities bearing a liability for premiums for which they do not receive an economic benefit, the net premiums written definition would address premium adjustments related to retrospectively rated contracts, computed on



an accrual basis. These amounts are received from policyholders (“retrospectively rated contract receipts,” which increase net premiums written) and paid to policyholders (“retrospectively rated contract payments,” which decrease net premiums written) annually based on the loss experience of the insured during the policy period. Prop. Reg. § 57.2(k)(2)(iii). Retrospectively rated contract receipts and payments do not include changes to funds or accounts that remain under the control of the covered entity, such as changes to premium stabilization reserves.

2. Risk Adjustment Payments and Charges

The proposed regulations clarify that a covered entity’s “net premiums written” includes risk adjustment payments received under Section 1343 of the ACA and is reduced for risk adjustment charges paid under Section 1343 of the ACA. Prop. Reg. § 57.2(k)(2)(iv).²



Regardless whether a covered entity includes risk adjustment payments received as direct premiums written on its Supplemental Health Care Exhibit (SHCE), or does not file an SHCE, these risk adjustment payments and charges are included in the net premiums written computation and must be reported on Form 8963. Risk adjustment payments received and charges paid are computed on an accrual basis.

3. Reinsurance Premiums

The proposed regulations revise headings to emphasize that assumption reinsurance premiums are included in net premiums written and ceded premiums for assumption reinsurance reduce net premiums written, but that premiums for indemnity reinsurance are excluded from net premiums written because “indemnity reinsurance ... is not health insurance ...” This rule is designed to prevent double-counting of premiums related to the same health insurance coverage.

4. IRS Authorized to Publish Additional Guidance

The proposed regulations authorize the IRS to publish additional guidance in the Internal Revenue Bulletin, rather than through additional amendments to the regulations, to provide rules for additional adjustments to premiums written in determining net premiums written. Prop. Reg. § 57.2(k)(2)(v). This authorization should facilitate timely responses to emerging questions and issues regarding computation of net premiums written.

PROP. REG. § 57.3

1. Electronic Filing of Form 8963

Proposed regulations provide that a covered entity (including a controlled group) reporting more than \$25 million in net premiums written on a Form 8963 or corrected Form 8963, *i.e.*, covered entities that are fee payers, must electronically file these forms after Dec. 31, 2017 (for the 2018 fee year). Failure to electronically file will be treated as a failure to file for purposes of §57.3(b). Electronic filing will not be required for Forms 8963 reporting \$25 million or less in net premiums written, *i.e.*, for health insurers that will not be required to pay a fee.

The notice of proposed rulemaking asserts electronic filing of Forms 8963 and corrected Forms 8963 would facilitate the administration of the fee by significantly reducing delays and the resources needed to calculate the preliminary and final fee amounts. This change in filing requirements should be helpful in light of the short turnaround between a taxpayer’s initial filing of Form 8963 (April 15), the IRS’s mailing the notice of preliminary fee (June 15), the due date for health insurer’s corrections (July 15), the IRS’s mailing the final fee calculation (August 31), and the due date for payment of the fee (September 30).

The health insurer fee is suspended for the fee year 2017.³ ■

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ENDNOTES

- 1 For more background on the annual health insurer fee, see “A Tax Like No Other: The Health Insurer Fee,” 11 *TAXING TIMES* 23 (Oct. 2015), by Jean Baxley, Mersini Keller, and Lori Robbins.
- 2 For a discussion of the ACA risk adjustment program, see “Reporting the Costs and Benefits of the 3R’s,” 11 *TAXING TIMES* 34 (June 2015), by Maureen Nelson, Matthew Haaf, and Megan Lansden.
- 3 Consolidated Appropriations Act of 2016, Pub. L. No. 114-113, Div. P, §201 (Dec. 18, 2015). For more information see Frequently Asked Questions on the 2017 Moratorium on Health Insurance Provider Fee, https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FINAL_9010_FAQ_2-29-16