



VCU Medical Center

Office of Health Innovation

Proposed Rule: Health Insurance Providers Fee

Description: This document contains proposed regulations that provide guidance on the annual fee imposed on covered entities engaged in the business of providing health insurance for United States health risks. This fee is imposed by section 9010 of the Patient Protection and Affordable Care Act, as amended. The regulations affect persons engaged in the business of providing health insurance for United States health risks.

Major Provisions

Section 9010(a) of PPACA imposes an annual fee on each covered entity engaged in the business of providing health insurance. The fee is due by the annual date specified by the Secretary of the Treasury, but no later than September 30th of each calendar year in which a fee must be paid. Generally, each covered entity with aggregate net premiums written over \$25 million in the calendar year immediately preceding the fee year is liable for the annual fee.

Covered Entities

A covered entity is any entity that provides health insurance for any United States health risk during the fee year. The proposed regulations define the term “covered entity” to mean any entity with net premiums written for health insurance for United States health risks during the fee year that is:

1. A health insurance issuer;
2. A health maintenance organization;
3. An insurance company that is subject to tax under part I or II of subchapter L, or that would be subject to tax under part I or II of subchapter L but for the entity being exempt from tax under section 501(a);
4. An insurer that provides health insurance under Medicare Advantage, Medicare Part D, or Medicaid; or
5. A non-fully insured multiple employer welfare arrangement (MEWA).

Excluded Entities

1. **Self-Insured Employer:** The proposed regulations define the term self-insured employer to mean an employer that sponsors a self-insured medical reimbursement plan. This includes an arrangement in which an employer provides self-insured employee health benefits to former employees, such as retired employees, or provides self-insured employee health benefits through a third party organization.
2. **Governmental Entities:** The proposed regulations define the term governmental entity to mean:
 - i. The United States,

- ii. Any State;
 - iii. The District of Columbia;
 - iv. Any possession of the United States;
 - v. Any political subdivision of any of the foregoing;
 - vi. Any Indian tribal government or a subdivision thereof; or
 - vii. Any public agency that is created by a State or a political subdivision, organized as a nonprofit under State law, and contracts with the State to administer State Medicaid benefits through local providers or health maintenance organizations.
3. **Certain Nonprofit Corporations:** The proposed regulations exclude any entity that
- i. Is incorporated as a nonprofit corporation under State law;
 - ii. Meets certain requirements designed to ensure that the net earnings of the entity are not distributed to private parties and that the entity does not engage in political campaign activity or substantial lobbying; and
 - iii. Receives more than 80 percent of its gross revenues from government programs that target low-income, elderly, or disabled populations under titles XVIII, XIX, and XXI of the Social Security Act (which include Medicare, Medicaid, the Children's Health Insurance Plan, and dual eligible plans).
4. **Voluntary Employees' Beneficiary Associations (VEBA):** The proposed regulations explicitly exclude any VEBA that is established by an entity other than an employer or employers for the purpose of providing health care benefits, such as a union.
5. **Educational Institutions and Student Health Insurance:** Many educational institutions establish or administer programs that provide students with access to health insurance. In most instances, however, the educational institution uses premiums it receives from students to purchase insurance from a separate, unrelated issuer. This unrelated issuer and not the educational institution will be a covered entity for purposes of section 9010 and it will include the premiums paid by or on behalf of those students for purposes of determining the amount payable under section 9010.

Reporting Requirements

The proposed regulations require each covered entity, including each controlled group that is treated as a single 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 May 1st of the fee year on Form 8963, "Report of Health Insurance Provider Information," in accordance with the instructions for the form.

- A covered entity with net premiums written under the \$25 million threshold is not liable for a fee but must still report its net premiums written.

Section 9010(g)(2) of PPACA imposes a penalty for failing to timely submit a report containing the required information unless the covered entity can show that the failure is due to reasonable cause.

- The amount of penalty for failure to report is equal to:
 - \$10,000, plus:

- The lesser of:
 - An amount equal to \$1,000, multiplied by the number of days during which such failure continues; or
 - The amount of the covered entity's fee for which the report was required.
- The penalty for failure to timely submit a report is waived if the failure is due to reasonable cause. A failure will be due to a reasonable cause if the covered entity exercised ordinary business care and prudence and was nevertheless unable to submit the report within the prescribed time.
- The proposed regulations clarify that this penalty is in addition to the fee.

Section 9010(g)(3) of PPACA imposes an accuracy-related penalty for any understatement of a covered entity's net premiums written.

- The amount of the accuracy-related penalty is equal to the excess of:
 - The amount of the covered entity's fee for the fee year that the Secretary determines should have been paid in the absence of any understatement; over
 - The amount of the covered entity's fee for the fee year that the Secretary determined based on the understatement.
- The proposed regulations clarify that this penalty is in addition to the fee.

Fee Calculation

Under the proposed regulations, the IRS will determine net premiums written based on the reports submitted by covered entities and any other source of information available to the IRS. Most covered entities are expected to file the SHCE, which supplements the annual statement filed with the NAIC under applicable State law. The proposed regulations further provide that the entire amount reported on the SHCE as direct premiums written will be considered to be for United States health risks unless the covered entity can demonstrate otherwise.

The IRS will calculate a covered entity's fee based on the ratio of the covered entity's net premiums written that are taken into account to the total net premiums written taken into account of all covered entities.

- For each covered entity, the IRS will not take into account the first \$25 million of net premiums written.
- The IRS will take into account 50 percent of the net premiums written for amounts over \$25 million and up to \$50 million and 100 percent of the net premiums written over \$50 million.
 - Thus, for any covered entity with net premiums written of \$50 million or more, the IRS will not take into account the first \$37.5 million of net premiums written.
- After this reduction, if the covered entity is exempt from tax by section 501(a) and is described in section 501(c)(3), (4), (26), or (29), the IRS will take into account only 50 percent of the

remaining net premiums written of that entity (or member) that are attributable to its exempt activities.

Each covered entity's allocated fee for any fee year is equal to an amount that bears the same ratio to the applicable amount as the covered entity's net premiums written for health insurance of United States health risks during the data year taken into account bears to the aggregate net premiums written for health insurance of United States health risks of all covered entities during the data year taken into account.

The applicable amounts for the fee years are:

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
2019 and thereafter	The applicable amount in the preceding fee year increased by the rate of premium growth.

For each covered entity for each fee year, the IRS will calculate the covered entity's allocated fee by multiplying the applicable amount by a fraction:

- **Numerator:** The covered entity's net premiums written for health insurance of United States health risks during the data year taken into account.
- **Denominator:** The aggregate net premiums written for health insurance of United States health risks for all covered entities during the data year taken into account.

Notice of Preliminary Fee Calculation

The proposed regulations provide that the IRS will send each covered entity a notice of preliminary fee calculation each fee year that will include:

1. The covered entity's allocated fee;
2. The covered entity's net premiums written for health insurance of United States health risks;
3. The covered entity's net premiums written for health insurance of United States health risks taken into account after the application of § 57.4(a)(4);
4. The aggregate net premiums written for health insurance of United States health risks taken into account for all covered entities; and
5. A reference to the error correction process set forth in other guidance published in the Internal Revenue Bulletin.

Additional Provisions

- **Error Correction Process:** The proposed regulations establish an error correction process that allows a covered entity to submit error correction reports in response to the preliminary fee calculation for the IRS to consider before performing a final fee calculation.
- **Notification of Final Fee Calculation and Payment:** The proposed regulations provide that the IRS will send each covered entity its final fee calculation for a fee year no later than August 31st of that fee year, and that the covered entity must pay the fee by September 30th by electronic funds transfer.
- **Tax Treatment of Fee:** Under the proposed regulations, the fee is treated as an excise tax.