

Self-Funded Employers Must Report Membership by November 17th, for Purposes of Making ACA Reinsurance Payments

Issue Date: October 2014

Employers who sponsor self-funded health plans must report their average membership numbers to the Department of Health and Human Services (HHS) no later than November 17th. The reported membership will be used to calculate the amount due for 2014 contributions to the transitional reinsurance program. Employers will also need to schedule the first payment at the time the membership is reported. The first reinsurance contribution payment must be made no later than January 15, 2015. The reinsurance fee will be paid by the health insurance company on behalf of fully-insured employer-sponsored plans.

Background

The Affordable Care Act (ACA) creates a transitional reinsurance program to help stabilize premiums for coverage in the individual market from 2014 through 2016. 'Contributing entities' (either health insurance companies or sponsors of self-funded plans) are required to make reinsurance payments annually for 'major medical coverage'. Payments are calculated by multiplying the average number of covered lives during the benefit year by the contribution rate for the applicable year.

Contributing Entities

A 'contributing entity' is defined as "a health insurance issuer or a self-insured group health plan."

- With respect to fully-insured coverage, issuers (health insurance carriers) are responsible for making reinsurance contributions.
- With respect to a self-funded group health plan, the plan sponsor is responsible for making reinsurance contributions. Because this is a plan responsibility, generally the employer (acting as the plan sponsor), will be required to make the payments for self-funded plans.

Note: If the plan funding changes from fully-insured to self-funded during the calendar year, the insurer/carrier and plan sponsor are each responsible for paying a pro rata portion of the fee.

Which Employer Plans are Subject to the Reinsurance Contribution?

For the purpose of employer-sponsored group health plans, the reinsurance contribution is required for major medical plans that provide "minimum value." Minimum value is generally defined as a plan that has an actuarial value of at least 60%.

HHS recently released guidance that clarifies employers are not required to make reinsurance contributions on behalf of health FSAs and health reimbursement arrangements (HRAs) that are integrated with a group health plan.

In addition, reinsurance contributions do not apply to:

- Health Savings Accounts (HSAs);
- Self-funded dental and vision plans that meet the requirements of being an excepted benefit;
- EAPs, disease management or wellness programs that do not provide significant medical benefits;
- Stop-loss or indemnity reinsurance policies; and
- For individuals with both Medicare coverage and employer-sponsored group coverage, and the Medicare coverage is primary.

Amount and Timing of Reinsurance Contribution

Each year HHS will publish the national per capita contribution rate.

- 2014 benefit year contribution = \$63 per participant
- 2015 benefit year contribution = \$44 per participant
- 2016 benefit year contribution = TBD

Reporting Membership

Contributing entities must first report the plan's membership by November 15th, each year. In 2014, membership must be reported by Monday, November 17th since the 15th falls on a Saturday.

Contributing entities will use the federal website Pay.gov to report and pay the fee. The contributing entity will access the "ACA Transitional Reinsurance Program Annual Enrollment and Contributions Submission Form" to enter the annual enrollment count. The form will auto-calculate the annual contribution amount to be remitted based on the annual enrollment count, and the contributing entity will then schedule payment for the calculated reinsurance contributions on the payment page.

Important Note: as of the publication of this summary, the "ACA Transitional Reinsurance Program Annual Enrollment and Contributions Submission Form" is not yet available on Pay.gov.

Paying the Fee

Reinsurance contributions are due in two installments. For the 2014 benefit year, the first installment of \$52.50 per covered life is due by January 15, 2015. The balance of \$10.50 per covered life must be paid no later than November 15, 2015. Employers may choose to pay the entire contribution in a single payment by the first deadline. Payments for all plans will need to be made at the same time regardless of the employer's actual plan year.

Membership Counting Methods

The count must be determined using one of the three specified methods described below. These membership counting methods are similar to those used to calculate membership for payment of the PCORI fee, but different timeframes are used. When using the actual count or the snapshot method for calculating the membership for the reinsurance fee, the employer must use the plan's membership during the first three quarters of the calendar year, regardless of the plan year. If the 5500 method is used, the employer must use the participant count reported on the most recently filed Form 5500.

- Actual Count Method - calculate the sum of lives covered for each day from January 1 – September 30 and divide by the number of days in the period.
- Form 5500 Method – use the number of "5500 participants" actually reported on the Form 5500 for the plan year. Total number of lives is determined by adding the total participant counts at the beginning and end of the year.
 - A participant for 5500 purposes includes only the principal "subscriber" (i.e. employee or COBRA participant), not the dependents.
 - Only employers who actually file a Form 5500 may use this method.
- Snapshot Method - add the total number of lives covered on any date (or more dates if an equal number of dates are used for each quarter) during the same corresponding month in each quarter, and divide that total by the number of dates on which a count was made.
- Snapshot Factor Method - same as the snapshot method except that the number of lives covered on a date is calculated by adding the number of participants with self-only coverage to the product of the number of participants with coverage other than self-only coverage times a factor of 2.35.

Summary

The Department of Labor advised that paying reinsurance contributions would constitute a permissible expense of the plan for purposes of ERISA because the payment is required by the plan under the ACA.

Employers with fully-insured plans will not need to do anything regarding this payment, but need to be aware that the cost will be factored into the premiums paid to the carrier. Employers with self-insured plans will need to either negotiate with their administrator to make payments on behalf of the plan or prepare to calculate and report applicable plan membership by November 17, 2014.

Please be aware that this does not represent legal or tax advice and is only Frenkel's interpretation of the laws, regulations and statutes. It is highly recommended that you seek the advice of your legal and tax professional as to the applicability of this information to your particular situation.