Parker
Brown
Macaulay &
Sheerin

December 10, 2012

Here Come the Taxes on Your Group Health Plans Courtesy of the ACA
Part II

Transitional Reinsurance Program Fees

The IRS issued proposed regulations on November 30, 2012 that provide guidance on the Transitional Reinsurance Program contributions assessed by the ACA on certain "contributing entities."

This Part II provides a brief overview of the reinsurance contributions associated with the new Transitional Reinsurance Program, which is a temporary three year program that operates during calendar years 2014 through 2016.

BACKGROUND

The ACA establishes a Transitional Reinsurance Program to help stabilize premiums for coverage in the individual market during the years 2014 through 2016, requiring all health insurers (in the individual, small group and large group markets) and self-insured group health plans to make contributions under this program to support payments to individual market insurers (both inside and outside the Exchanges) that cover high-cost individuals. These stabilization payments are intended to protect individual market insurers against adverse selection as insurance market reforms are implemented.

Each state may establish its own reinsurance program. If a state does not establish its own program, then HHS will operate a reinsurance program for that state. In either case, HHS will collect the reinsurance contributions annually from contributing entities using a uniform national per capita contribution rate and then distribute the proceeds accordingly.

BASIC NUTS AND BOLTS

- Unlike the PCORI fees discussed in Part I, which apply on a plan or policy year basis, determination of the reinsurance contribution applies on a calendar year basis. First payment will likely not be due until December 2014 or January 2015.

- The reinsurance contributions must be paid by health insurers and self-insured health plans for group health plans and health insurance coverages that are:

    - Considered major medical coverage; and
    - In the case of health insurance coverage, considered part of the insurer's commercial book of business and issued on a form filed and approved by a State insurance department.

- Types of coverage that are limited in scope and <u>not subject to the reinsurance contribution</u> because they are not considered major medical coverage:

    - Stand-alone vision and dental plans, dread disease coverage and hospital indemnity coverage
    - HSAs, HRAs and FSAs
    - EAPs, disease management and wellness programs that typically provide only ancillary benefits
    - Private Medicare Part C and Part D plans
    - Stop-loss insurance

- Also a group health plan that is coordinating with Medicare coverage and is subject to the Medicare Secondary Payor (MSP) rules would be considered major medical coverage only if the group health plan is the primary payer of medical expenses (and Medicare is the secondary payer).

- The aggregate amount to be collected nationally under the Transitional Reinsurance Program is $25 billion over three years.* Please note that $20 billion of the amount to be collected will fund the reinsurance pool, while the remaining $5 billion will be paid to the U.S. Treasury**, as follows:

Year	Reinsurance Pool	U.S. Treasury	Total	Estimated Per Capita Contribution
2014	$10 billion	$2 billion	$12 billion	$63
2015	$6 billion	$2 billion	$8 billion	$42
2016	$4 billion	$1 billion	$5 billion	$26
Total	$20 billion	$5 billion	$25 billion	$113

** Contrast this amount with the $3.4 billion PCORI fee collected over seven years and discussed in Part I of this series.*
*** The proposed regulation notes that the $5 billion payable to the U.S. Treasury is the same dollar amount as that appropriated for the Early Retiree Reinsurance Program (ERRP).*

- In order to simplify the collection and administration of the Transitional Reinsurance Program a uniform contribution rate will be determined for each year of the program by HHS using the following formula:

  National Per Capita Contribution Rate = *<u>Reinsurance Pool + U.S. Treasury + Administration</u>* / *Estimate of Enrollees in Plans Subject to Contributions*

- The annual Required Reinsurance Contribution payable by a health insurer or a self-insured plan will be as follows:

  Required Reinsurance Contribution:
  = Number of Covered Lives During the Benefit Year for all Entity's Plans

  X National Per Capita Contribution Rate for the Applicable Benefit Year

- Covered lives include participants, spouses and dependents

- Insurers pay the contributions on behalf of insured coverages (although plan sponsors of insured plans will likely see this cost passed through to them by the insurer in the form of higher premiums).

- Employer/plan sponsors of self-insured health plans are liable for the reinsurance contribution. However, the employer/plan sponsor may use a TPA to transfer the reinsurance contributions to HHS on their behalf.

- An IRS FAQ released concurrently with the proposed regulation confirms that health insurers and employer/sponsors of self-insured plans may treat the reinsurance contributions made under the Transitional Reinsurance Program as ordinary and necessary business expenses.

- With regard to the timing, HHS will collect and pay out reinsurance funds on an annual basis from all states, as follows:

  - By November 15 of each year (2014, 2015 and 2016), the insurer or employer/sponsor is required to submit the annual enrollment count of the number of covered lives subject to the reinsurance contribution to HHS.
  - By December 15, or if later within 15 days of submission of the annual enrollment count, HHS will notify the insurer or employer/sponsor of the total contribution amount to be paid.
  - The insurer or employer/sponsor will be required to submit its payment to HHS within 30 days of notification of the amount due.

- The proposed regulation provides a number of methods to calculate covered lives for purposes of determining the annual enrollment count. These methods generally follow the same methods used for the PCORI fee, except that they have been modified so that the number of covered lives will be determined in the fourth quarter based on the first nine months of the year.
  - The proposed regulation permits the use of a different counting method for the annual enrollment count of covered lives for purposes of reinsurance contributions from that used for purposes of PCORI. This is helpful given that time periods and counting methods may differ.

* * * * *

Please contact me if you have any questions.

Richard A. Szczebak, Esq.
617-399-0441 | rszczebak@parkerbrown.com