

## **Part III – Administrative, Procedural, and Miscellaneous**

### **Health Insurance Providers Fee; Procedural and Administrative Guidance**

Notice 2015-29

#### **SECTION 1. PURPOSE**

This notice provides guidance on how the special rule for expatriate health plans for the 2014 and 2015 fee years under the Expatriate Health Coverage Clarification Act of 2014 applies for purposes of the fee imposed by § 9010 of the Affordable Care Act.

This notice obsoletes Notice 2014-24, 2014-16 IRB 942.

#### **SECTION 2. BACKGROUND**

Section 9010 of the Patient Protection and Affordable Care Act (PPACA), Public Law 111-148 (124 Stat. 119 (2010)), as amended by § 10905 of PPACA, and as further amended by § 1406 of the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act or ACA), imposes an annual fee on covered entities engaged in the business of providing health insurance for United States health risks. The fee is a fixed amount allocated among all covered entities in proportion to their relative market share as determined by each

entity's net premiums written for the data year, which is the year immediately preceding the year in which the fee is paid (the year in which the fee is paid is the fee year).

Section 9010(b)(3) requires the Secretary to calculate the amount of each covered entity's annual fee. For this purpose, § 9010(g)(1) requires each covered entity to report to the Secretary its net premiums written for health insurance for any United States health risk for the data year. Section 9010(d) defines United States health risk to mean a health risk of any individual who is: (1) a United States citizen; (2) a resident of the United States (within the meaning of § 7701(b)(1)(A)); or (3) located in the United States, during the period such individual is so located.

The Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) published final Health Insurance Provider Fee regulations (T.D. 9643, 78 FR 71476) on November 26, 2013, to provide guidance regarding the § 9010 fee. The regulations require each covered entity to annually report its net premiums written for health insurance of United States health risks by April 15th of the fee year on Form 8963, *Report of Health Insurance Provider Information*. For covered entities that file the Supplemental Health Care Exhibit (SHCE) with the National Association of Insurance Commissioners (NAIC), net premiums written for health insurance generally will equal the amount reported on the SHCE as direct premiums written minus medical loss ratio (MLR) rebates with respect to the data year, subject to any applicable exclusions under § 9010.<sup>1</sup> Form 8963 accordingly requires reporting of direct premiums written for

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<sup>1</sup> References to the SHCE are solely for the covered entity's convenience in identifying the premium information required for Form 8963. If the entity does not file an SHCE with NAIC, the entity is still required to file Form 8963 and provide direct premiums written for health insurance of United States health risks on Form 8963 and any other information required by the form. Other sources of information for determining direct premiums written include the MLR Annual Reporting Form filed with the Center for

purposes of determining net premiums written. Section 57.4(b)(2) of the Health Insurance Providers Fee regulations provides that the entire amount reported as direct premiums written on the SHCE (including direct premiums written for expatriate health plans) will be considered to be for United States health risks unless the covered entity can demonstrate otherwise.

The Health Insurance Providers Fee regulations do not provide specific rules for expatriate health plans. The SHCE includes separate reporting for expatriate health plans, which are defined by reference to the definition of expatriate policies in the MLR final rule issued by the Department of the Health and Human Services (MLR final rule definition). The MLR final rule definition defines expatriate policies as predominantly group health insurance policies that provide coverage to employees, substantially all of whom are: (1) working outside their country of citizenship; (2) working outside their country of citizenship and outside the employer's country of domicile; or (3) non-U.S. citizens working in their home country. 45 CFR 158.120(d)(4). On March 29, 2014, Treasury and the IRS issued Notice 2014-24, which provided a temporary safe harbor for a covered entity that reports expatriate health plans on its SHCE. Notice 2014-24 allowed a covered entity to exclude 50% of its direct premiums written for expatriate health plans reported on the SHCE in reporting total direct premiums written to the IRS for purposes of determining the fee for the 2014 and 2015 fee years. Certain covered entities applied this temporary safe harbor in reporting their direct premiums written for purposes of determining their 2014 fee, which was due on September 30, 2014.

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Consumer Information and Insurance Oversight or any equivalent form required by the state of domicile of the entity or by federal law. If no single form contains all of the relevant data for determining all of the direct premiums written for health insurance for United States health risks of an entity, then direct premiums written must be determined using aggregated data from multiple sources.

On December 16, 2014, Congress enacted the Expatriate Health Coverage Clarification Act of 2014 (EHCCA) as part of the Consolidated and Further Continuing Appropriations Act, 2015, Division M, Public Law 113-235 (128 Stat. 2130 (2014)). Section 3(a) of the EHCCA provides that the ACA generally does not apply to expatriate health plans. Section 3(c)(1) of the EHCCA specifically excludes expatriate health plans from the § 9010 fee by providing that, for calendar years after 2015, a qualified expatriate (and any spouse, dependent, or any other individual enrolled in the plan) enrolled in an expatriate health plan is not considered a United States health risk. These rules are generally effective for expatriate health plans issued or renewed on or after July 1, 2015, unless otherwise specified.

Section 3(c)(2) of the EHCCA provides a special rule that applies solely for purposes of determining the fee under § 9010 for fee years 2014 and 2015. The special rule does not affect the calculation of the fee generally for all covered entities. Instead, after the fees are calculated, the special rule proportionally reduces the fee of a covered entity with expatriate health plans to account for its net premiums written for those plans. Thus, for fee years 2014 and 2015, a covered entity with net premiums written for expatriate health plans will pay a lower fee but this reduction will have no impact on the fee for the remaining covered entities.

Section 3(d)(2) of the EHCCA provides a definition of the term expatriate health plan that is more detailed than the MLR final rule definition of expatriate health policies. Treasury and the IRS, in consultation with the Department of Labor and the Department of Health and Human Services, expect to publish guidance on the definition of expatriate health plan in § 3(d)(2) of the EHCCA as applied to the ACA generally and to

§ 9010 specifically. However, for purposes of the special rule that applies solely to the 2014 and 2015 fee years, Treasury and the IRS have determined that the MLR final rule definition of expatriate policies also used on the SHCE and in Notice 2014-24 is broad enough to cover all potential expatriate health plans described in § 3(d)(2) of the EHCCA. Therefore, because guidance is urgently needed to implement this special rule, this notice uses the MLR final rule definition to define expatriate health plan solely for this limited purpose. No inference is intended regarding the definition of expatriate health plan under § 3(d)(2) of the EHCCA for any other purpose.

### SECTION 3. PROCEDURES FOR SHCE FILERS

To claim the benefit of the special rule for expatriate health plans for fee years 2014 and 2015 under the EHCCA, a covered entity that satisfies the requirements in § 3.01 of this notice must report its direct premiums written for expatriate health plans as reported on its SHCEs on a statement attached to its 2015 Form 8963 that includes the certifications described in § 3.02 of this notice. For this limited purpose, an expatriate health plan means an expatriate policy under the MLR final rule definition described in § 2 of this notice.

#### .01 Filing Prerequisites.

A covered entity must satisfy the following requirements:

- (1) The covered entity (including controlled group members, if any) filed SHCEs for 2014, 2015, or both with the NAIC in which it reported direct premiums written for expatriate health plans (defined by reference to the MLR final rule definition of expatriate policies, which is used for purposes of the SHCE); and

(2) The covered entity included some or all of those direct premiums written for expatriate health plans in column (f), Direct premiums written, on its Form 8963 for 2014 or 2015 (or both), as applicable.

.02 Certification.

A covered entity described in § 3.01 must attach a statement to its 2015 Form 8963 certifying the following:

(1) The covered entity (or designated entity, in the case of a controlled group) filed the SHCE for 2014, 2015, or both, as the case may be;

(2) The covered entity is filing the statement pursuant to Notice 2015-29;

(3)(a) The aggregate dollar amount of direct premiums written for expatriate health plans reported on its SHCE(s) for 2014 for that covered entity (including the amounts for all members of the controlled group, if applicable) and (b) the amount of direct premiums written for expatriate health plans the covered entity excluded in determining the amount of direct premiums written reported in column (f), Direct premiums written, on its 2014 Form 8963 (see § 3.01 of Notice 2014-24, which permitted an entity to exclude 50% of this aggregate amount); and

(4) The aggregate dollar amount of direct premiums written for expatriate health plans that is reported on the SHCE(s) for 2015 for the covered entity (including the amounts for all members of the controlled group, if applicable) and included in direct premiums written reported in column (f), Direct premiums written, on the covered entity's 2015 Form 8963.

.03 Example.

The following example illustrates the application of this section 3:

Company X, the designated entity of a controlled group, and X's controlled group members (collectively, X Group) reported \$1 million in direct premiums written for expatriate health plans, in the aggregate, on their SHCEs for 2014. Pursuant to Notice 2014-24, X Group excluded 50% of this aggregate amount, or \$500,000, from its 2014 Form 8963. In 2015, X Group members reported \$2 million in direct premiums written for expatriate health plans, in the aggregate, on their SHCEs and X Group included that amount in direct premiums written on its 2015 Form 8963. Company X must attach the following statement to its 2015 Form 8963:

Company X hereby certifies that: (1) X Group filed SHCEs with the NAIC reporting direct premiums written for expatriate health plans in the 2014 and 2015 fee years; (2) X Group is filing this statement pursuant to Notice 2015-29; (3)(a) X Group reported an aggregate of \$1,000,000 in direct premiums written for expatriate health plans on its 2014 SHCEs and (b) X Group excluded 50% of this aggregate amount, or \$500,000, in determining the amount of direct premiums written reported on its 2014 Form 8963 pursuant to § 3.01 of Notice 2014-24; and (4) X Group is reporting an aggregate of \$2,000,000 in direct premiums written for expatriate health plans on its 2015 SHCEs and has included that amount in direct premiums written on the attached 2015 Form 8963.

#### SECTION 4. PROCEDURES FOR NON-SHCE FILERS

To claim the benefit of the special rule for expatriate health plans for fee years 2014 and 2015 under the EHCCA, a covered entity that satisfies the requirements in § 4.01 of this notice must report its direct premiums written for expatriate health plans on a statement attached to its 2015 Form 8963 that includes the certifications described

in § 4.02 of this notice. For this limited purpose, an expatriate health plan means an expatriate policy under the MLR final rule definition described in § 2 of this notice.

#### .01 Filing Prerequisites.

A covered entity must satisfy the following requirements:

- (1) The covered entity (including controlled group members, if any) did not file SHCEs for either 2014 or 2015 with the NAIC.
- (2) The covered entity (including controlled group members, if any) included direct premiums written for expatriate health plans as defined by the MLR final rule definition described in § 2 of this notice in column (f), Direct premiums written, on its Form 8963 for 2014 or 2015 (or both).

#### .02 Certification.

A covered entity described in § 4.01 must attach a statement to its 2015 Form 8963 certifying the following:

- (1) The covered entity is filing the statement pursuant to Notice 2015-29;
- (2) The aggregate dollar amount of direct premiums written for expatriate health plans that it included in column (f), Direct premiums written, on its 2014 Form 8963 (including the amounts for all members of the controlled group, if applicable);
- (3) The aggregate dollar amount of direct premiums written for expatriate health plans that it included in column (f), Direct premiums written, on its 2015 Form 8963 (including the amounts for all members of the controlled group, if applicable); and
- (4) The source of information that the covered entity has available on request for determining direct premiums written for expatriate health plans for 2014 and 2015, such as the Accident and Health Policy Experience filed with the NAIC, the MLR Annual

Reporting Form filed with the Center for Consumer Information and Insurance Oversight of the Department of Health and Human Services, or any similar statements filed with the NAIC, with any state government, or with the federal government pursuant to applicable state or federal requirements.

.03 Example.

The following example illustrates the application of this section 4:

Company Y, the designated entity of a controlled group, and Y's controlled group members (collectively, Y Group) reported \$20,000 in direct premiums written for expatriate health plans, in the aggregate, on its 2014 Form 8963. Y Group reported \$15,000 in direct premiums written for expatriate health plans, in the aggregate, on its 2015 Form 8963. Company Y must attach the following statement to its 2015 Form 8963.

Company Y hereby certifies that: (1) Company Y is filing this statement pursuant to Notice 2015-29; (2) Y Group reported an aggregate of \$20,000 in direct premiums written for expatriate health plans that met the MLR final rule definition on its 2014 Form 8963; (3) Y Group is reporting an aggregate of \$15,000 in direct premiums written for expatriate health plans that met the MLR final rule definition on its 2015 Form 8963; and (4) Y Group reported for 2014 and expects to report for 2015 direct premiums written for expatriate plans on Y Group's MLR Annual Reporting Form filed with the Center for Consumer Information and Insurance Oversight in the amounts described in (2) and (3) above, which Y Group will supply upon request.

**SECTION 5. APPLICATION OF SPECIAL RULE BY ADJUSTMENT TO 2015 FEE**

The IRS will apply the special rule for both the 2014 and 2015 fee years by adjusting the 2015 fee rather than by issuing refunds.<sup>2</sup> The IRS will first calculate the 2015 fee for all covered entities as described in § 57.4. Second, for a covered entity with premiums for expatriate health plans included in total direct premiums written reported for the 2015 fee year, the IRS will adjust the covered entity's 2015 fee by (a) multiplying its 2015 fee amount by a fraction, the numerator of which is the amount of its expatriate health plan premiums taken into account that is included in net premiums written taken into account for the 2015 fee year and the denominator of which is the covered entity's total net premiums written taken into account for the 2015 fee year; and (b) subtracting this amount from the 2015 fee. Third, for a covered entity with net premiums written for expatriate health plans included in total direct premiums written reported for the 2014 fee year, the IRS will further adjust the entity's 2015 fee by (a) multiplying its 2014 fee amount by a fraction, the numerator of which is the amount of its expatriate health plan premiums taken into account that is included in net premiums written taken into account for the 2014 fee year and not previously excluded in determining the 2014 fee and the denominator of which is the covered entity's total net premiums written taken into account for the 2014 fee year; and (b) subtracting this amount from the 2015 fee.

## SECTION 6. EFFECT ON OTHER DOCUMENTS

Notice 2014-24 is obsoleted.

## SECTION 7. EFFECTIVE/APPLICABILITY DATES

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<sup>2</sup> If this computation reduces the covered entity's 2015 fee below zero and results in an amount due to the covered entity for the 2015 fee year, the IRS will pay the amount due to the covered entity.

This notice is effective March 30, 2015 and applies only to fee years 2014 and 2015.

#### **SECTION 8. DRAFTING INFORMATION**

The principal author of this notice is Rachel S. Smith of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, please contact Ms. Smith at (202) 317-6855 (not a toll-free call).