

Part III - Administrative, Procedural, and Miscellaneous

Health Insurance Providers Fee

Notice 2014-47

Section 1. PURPOSE

This notice provides guidance for the 2014 fee year on how the Internal Revenue Service (IRS) and the Department of Treasury (Treasury) will administer the definition of a covered entity for purposes of the fee imposed by § 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 ACA). This notice applies only to the 2014 fee year. All references to § 9010 are references to § 9010 of the ACA.

Specifically, this notice resolves confusion as to the scope of the exclusions in § 9010(c)(2) from the general definition of the term covered entity. Additionally, this notice clarifies that a controlled group does not have to report for a controlled group member who would not qualify as a covered entity in the 2014 fee year if it were a single-person covered entity.

Section 2. BACKGROUND

Section 9010(c)(1) defines the term “covered entity” to mean any entity that provides health insurance for any United States health risk during the calendar year in which the fee is due (the fee year).

Generally, § 9010(c)(2) excludes from the definition of covered entity-- (A) self-insured employers; (B) governmental entities; (C) certain nonprofit corporations; and (D) non-employer established § 501(c)(9) entities.

Section 9010(c)(3) provides that for purposes of § 9010(c), all persons treated as a single employer under subsection (a) or (b) of § 52 of the Internal Revenue Code (Code), or subsection (m) or (o) of § 414 shall be treated as a single covered entity (or employer for purposes of § 9010(c)(2)).

Section 57.2(c)(1) of the Health Insurance Providers Fee Regulations (Regulations) defines the term controlled group to mean a group of two or more persons, including at least one person that is a covered entity, that is treated as a single employer under § 52(a), 52(b), 414(m), or 414(o) of the Code.

Section 57.2(c)(2) of the Regulations treats a controlled group (as defined in § 57.2(c)(1)) as a single covered entity for purposes of the health insurance providers fee.

Section 57.2(d) defines the term data year to mean the calendar year immediately before the fee year.

Section 57.2(g) defines the term fee year to mean the calendar year in which the fee must be paid to the government.

Section 3. DISCUSSION

For the 2014 fee year, the IRS and Treasury will not treat any entity as a covered entity if it is excluded from the definition of a covered entity because it qualifies for one of the exclusions under § 9010(c)(2) for the entire 2013 data year or qualifies for one of the exclusions under § 9010(c)(2) for the entire 2014 fee year, which began on January 1, 2014. Since the IRS and Treasury will not treat such an entity as a covered entity, it should not report its net premiums written for the 2013 data year.

In addition, for the 2014 fee year, a controlled group must report net premiums written only for those persons who are controlled group members at the end of the day on December 31 of the 2013 data year and who would qualify as a covered entity in the fee year if it were a single-person covered entity. A controlled group should not report net premiums written for any controlled group member who would not qualify as a covered entity in the 2014 fee year if it were a single-person covered entity.

Such entity will be treated as a member of the controlled group for other purposes, however, such as joint and several liability for the fee amount allocated to the controlled group. Additional guidance will be issued in the future regarding the scope of the exclusions in § 9010(c)(2) from the general definition of the term covered entity for fee years after the 2014 fee year.

Section 4. CORRECTIVE ACTIONS/APPLICABILITY

Any entity that needs to correct a previously submitted Form 8963, "Report of Health Insurance Provider Information," due to the clarification provided in this notice must do so by faxing the corrected Form 8963 to 877-797-0235 (a toll-free number) no later than Monday, August 18, 2014. The IRS cannot process a Form 8963 received after this date. This notice applies only to the 2014 fee year.

The IRS and Treasury recognize that entities will not know whether they qualify for one of the exclusions under § 9010(c)(2) for the entire 2014 fee year until the end of 2014. Entities that reasonably project that they will qualify for an exclusion under § 9010(c)(2) for the entire 2014 fee year may submit a corrected Form 8963 on or before August 18, 2014, even though the 2014 fee year is not yet over.

Section 5. DRAFTING INFORMATION

The principal author of this notice is Natalie Payne of the Office of the Associate Chief Counsel (Passsthroughs & Special Industries). For further information regarding this notice please contact Ms. Payne at (202) 317-6855 (not a toll-free number).