

From: Anderson, Gina M - DHS **On Behalf Of** Smith, Heather K - DHS

Sent: Tuesday, July 10, 2018 2:52 PM

To: DHS DL Encounter Data Technical Work Group Conference Call; DHS DL HMO Contract Administrator Meeting

Cc: Miller, Fratney L - DHS; Lillethun, Chad W - DHS; Nerad, Benjamin M - DHS; Currans-Henry, Rachel H - DHS; Tufto, Matthew A - DHS; Cummings, Grant R - DHS; Katz, Marci - DHS (Marci S Katz Assoc); Hoeft, Bryan J - DHS; Wagner, Makalah - DHS

Subject: DOJ Request: Health Insurance Provider Fee Follow- up

Greetings,

The Department of Health Services, Division of Medicaid services would like you to be aware of your right to challenge the IRS preliminary calculation the Health Insurance Provider Fee, and would like to draw your attention to the deadline for doing so, which is July 15.

Because of the State of Wisconsin's legal strategy at use in current litigation, the Wisconsin Department of Justice is requesting that HMOs serving Medicaid clients avail themselves of this process and request that the IRS exclude the value of Medicaid premiums from the calculation of premiums upon which the HIPF is calculated.

IRS guidance is attached, but the error correction report process simply requires each HMO to submit to the IRS:

- 1) a new Form 8396 that subtracts the amount of premiums attributable to Medicaid, and has a check mark in the "Corrected Form" box on the form, and
- 2) a brief cover letter indicating: "This Corrected Form 8963 does not include Medicaid premiums in light of the decision in *Texas et al. v. United States et al.*, issued by the Northern District of Texas on March 5, 2018".

If DHS/DMS can be of any assistance to you, please let us know.

Thank you,
Heather K. Smith
Medicaid Director

Part III – Administrative, Procedural, and Miscellaneous

Health Insurance Providers Fee; Procedural and Administrative Guidance

Notice 2013-76

Purpose

This notice provides guidance on the health insurance providers fee related to (1) the time and manner for submitting Form 8963, “Report of Health Insurance Provider Information,” (2) the time and manner for notifying covered entities of their preliminary fee calculation, (3) the time and manner for submitting a corrected Form 8963 for the error correction process, and (4) the time for notifying covered entities of their final fee calculation.

Background

Section 9010 of the Patient Protection and Affordable Care Act (PPACA), Public Law 111-148 (124 Stat. 119 (2010)), as amended by section 10905 of PPACA, and as further amended by section 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 Health Insurance Providers Fee Regulations in 26 CFR Part 57, issued on November 29, 2013, provide the method by which each covered entity's annual fee is calculated. Those regulations provide that the Internal Revenue Service (IRS) will issue additional guidance in the Internal Revenue Bulletin relating to the reporting and fee determination processes. This notice provides that guidance.

Section 57.3(a)(1) provides that each covered entity, including each controlled group that is treated as a single covered entity, must report its net premiums written for health insurance of United States health risks during the data year to the IRS by April 15th of the fee year on Form 8963 in accordance with the instructions for the form. Section 57.2(g) defines fee year as the calendar year in which the fee must be paid to the government, and § 57.2(d) defines data year as the calendar year immediately before the fee year.

Section 57.3(a)(2) authorizes the IRS to provide rules in guidance published in the Internal Revenue Bulletin for the manner of reporting by a covered entity under this section, including rules for reporting by a designated entity on behalf of a controlled group that is treated as a single covered entity. Section 57.2(c)(1) defines controlled group as 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). Section 57.2(c)(2) provides that a controlled group is treated as a single covered entity for purposes of the fee. Section 57.2(e)(1) defines a designated entity as the person

within the controlled group that is designated to act on behalf of the controlled group regarding the fee with respect to filing Form 8963, receiving IRS communications about the fee for the group, filing a corrected Form 8963 for the group, if applicable, and paying the fee for the group to the government.

Section 57.3(a)(3) provides that, pursuant to section 9010(g)(4), the information reported on each Form 8963 will be open for public inspection or available upon request.

Section 57.5 provides that, for each fee year, the IRS will make a preliminary fee calculation for each covered entity and will notify each covered entity of this calculation by the date prescribed in guidance published in the Internal Revenue Bulletin. Section 57.5(a) provides that the notification 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 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) instructions for how to submit a corrected Form 8963 to correct any errors through the error correction process. **Section 57.6(a)**

requires each covered entity to review the preliminary fee calculation and submit a

corrected Form 8963 if there are any errors. Section 57.6(b) provides that the IRS will

specify in other guidance published in the Internal Revenue Bulletin the time and manner by which a covered entity must submit a corrected Form 8963.

Section 57.7(b) requires the IRS to send each covered entity its final fee calculation no later than August 31st of each fee year. Section 57.7(d) requires each covered entity to pay its fee by September 30th of each fee year.

Time and manner for submitting Form 8963

In accordance with § 57.3(a)(1), each covered entity (or, in the case of a controlled group, each designated entity) must file its Form 8963 by April 15th of each fee year. The Form 8963 must be filed in accordance with the instructions to the form. The form and the instructions will be electronically available at www.irs.gov.

Time and manner for notifying covered entities of their preliminary fee calculation

The IRS will mail each covered entity (or, in the case of a controlled group, each designated entity) a notice of its preliminary fee calculation by June 15th of each fee year. The notice of preliminary fee calculation will include all of the information required by § 57.5(a).

Time and manner for submitting an error correction report

If the covered entity believes that the notice of preliminary fee calculation contains one or more errors in the mathematical calculation of the fee, the net premiums written data, the net premiums written after taking into account the application of § 57.4(a)(4), or any other error, the covered entity (or, in the case of a controlled group, the designated entity) must provide a corrected report to the IRS by July 15th of each fee year. The covered entity will make an error correction report by completing in full a new Form 8963 and checking the "Corrected Report" box on the form. The corrected Form 8963 will replace the original Form 8963. Therefore, the corrected report must

contain all of the information required by the form's instructions. In the case of a controlled group, if the notice of preliminary fee calculation contains one or more errors, the corrected Form 8963 must include all of the information required by the form's instructions for the entire controlled group, including members that do not have corrections. Additionally, a covered entity may include attachments with the corrected Form 8963 if any corrected item requires further explanation.

The IRS will validate the data submitted on the corrected Form 8963 to ensure accuracy and completeness. Section 9010(b)(3) authorizes the IRS to use any other source of information to determine each covered entity's net premiums written for health insurance of United States health risks in addition to the information reported by each covered entity. Section 57.4(b)(1) provides that other sources of information that the IRS may use to determine net premiums written include the Supplemental Health Care Exhibit, which supplements the annual statement filed with the National Association of Insurance Commissioners (NAIC) pursuant to State law, the annual statement itself or the Accident and Health Policy Experience filed with the NAIC, the Medical Loss Ratio Annual Reporting Form filed with the Center for Medicare & Medicaid Services' Center for Consumer Information and Insurance Oversight of the U.S. 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. To the extent any covered entity's preliminary fee calculation changes as a result of the error correction process, the final fee calculation for one or more covered entities may differ from the preliminary fee calculations that those entities previously

received. Any such changes will be reflected in each covered entity's final fee calculation.

Notification and Payment of Final Fee Calculation

In accordance with § 57.7(b), the IRS will notify each covered entity (or each designated entity of a controlled group that is treated as a single covered entity) of its final fee calculation on or before August 31st of each fee year. In accordance with § 57.7(d), each covered entity (or designated entity, if applicable) must pay this fee by September 30th of each fee year.

Disclosure

The information submitted on both original and corrected Forms 8963 is not confidential. Although, generally, tax returns and return information are confidential, as required by § 6103, in accordance with § 57.3(a)(3), the information on Form 8963 is not subject to § 6103. All information on Form 8963 will be open for public inspection or available upon request. Do not include personal information other than that requested on Form 8963.

Drafting Information

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