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COMMISSIONER

STATE OF DELAWARE
DEPARTMENT OF INSURANCE

**DOMESTIC AND FOREIGN INSURERS BULLETIN NO. 113**

**TO:** **INSURANCE CARRIERS WHO ISSUE HEALTH BENEFIT PLANS IN DELAWARE**

**RE:** **IMPLEMENTATION OF THE DELAWARE HEALTH INSURANCE INDIVIDUAL MARKET STABILIZATION REINSURANCE PROGRAM ASSESSMENT**

**DATED:** **December 12, 2019**
**REVISED:** **March 3, 2020**
**REISSUED:** **December 3, 2020, November 30, 2021, February 7, 2023, and December 5, 2023.**

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This Bulletin sets forth the procedures for the collection of the assessment that provides, in part, the funding mechanism for the Delaware Health Insurance Individual Market Stabilization and Reinsurance Program (the Reinsurance Program). This program was established under 16 *Del.C.* § 9903 *et seq.* and 18 *Del. C.* § 8701 *et seq.* (collectively, the Act).

The purpose of revising and reissuing the Bulletin is to remind applicable carriers of their obligation to pay the assessment by March 1, 2024.

**Background:**

On August 20, 2019, the Federal Centers for Medicare and Medicaid Services (CMS) approved Delaware's application to establish a reinsurance program under Section 1332 of the Patient Protection and Affordable Care Act (ACA). CMS approved Delaware's Reinsurance Program to take effect for the 2020 plan year and to remain in effect until 2025.

The assessment is collected by the Delaware Department of Insurance, as authorized by 18 *Del. C.* § 8701 *et seq.* The Delaware Health Care Commission (DHCC) uses these funds to administer the State's Reinsurance Program as authorized by 16 *Del. C.* § 9903 *et seq.*

**Who is subject to the assessment?**

The assessment must be paid by any health insurance carrier that provides health insurance in this State. "Health insurance carrier" or "carrier" includes an insurance company, health service corporation, health maintenance organization, managed care organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.



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The entities providing insurance under the following types of plans do not meet the definition of carrier: plans of health insurance or health benefits designed for issuance to persons eligible for coverage under Titles XVIII, XIX, and XXI of the Social Security Act (42 U.S.C. §§ 1395 *et seq.*, 1396 *et seq.,* and 1397aa *et seq.*), known as Medicare, Medicaid; Chapter 52 of Title 29 of the Delaware Code; or any other similar coverage under state or federal governmental plans.

**Which products or lines are subject to the assessment?**

Any carrier who is providing health insurance in this State (other than those products specifically excluded under 18 *Del. C.* § 8702(c)) is required to pay the assessment. The definition of carrier does not distinguish between group and individual insurance.

The Act does *not* apply to stand-alone dental insurance, stand-alone vision insurance, long-term care insurance, disability income insurance, or accident-only insurance.

**How is the assessment calculated?**

The assessment is equal to 2.75 percent of all amounts used to calculate an entity's Delaware premium tax liability or the entity's premium tax exemption value, for products subject to the Act. *See* 18 *Del. C.* § 8703(b).

The Further Consolidated Appropriations Act, 2020, Division N, Subtitle E § 502 signed into federal law on December 20, 2019, repealed the annual fee on health insurance providers (The Health Insurance Providers Fee as defined under Section 9010 of the ACA) for calendar years beginning after December 31, 2020. Related technical corrections to the Delaware Insurance Code ocurred in 2022.

Henceforth Delaware's assessment on all amounts used to calculate an entity's Delaware premium tax liability or the entity's premium tax exemption value for products subject to the Act is 2.75 percent. *See* 18 *Del. C.* § 8703(b).

The attached form and instructions include precise methodology for this calculation.

**How will the premiums be allocated to Delaware?**

Carriers should employ the *same* methodology that is used for premium tax allocation pursuant to 18 *Del. C.* § 702.

**When will the amount be assessed and when is the amount due and payable?**

The assessment payment is due by March 1 of the calendar year. Entities subject to the assessment should submit the attached form and remit payment no later than March 1, 2024. A nonprofit health service plan subject to this assessment should use the premium tax exemption value from their first quarter report for the relevant plan year, subject to any exemptions or exclusions in the Act, to determine its assessment base.

**Is there any penalty or fee imposed for late payment or failure to pay?**

Yes, penalties and interest will be assessed pursuant to the Department's authority in 18 *Del. C.* § 329.

**Is the assessment tax deductible for entities subject to the Act?**

The Federal Internal Revenue Service has confirmed to other states who are implementing a 1332 waiver reinsurance program of their own that the assessment will be treated, for federal tax purposes, as either a deductible expense pursuant to 26 U.S.C.A § 162 and I.R.C. § 162 or a deductible tax pursuant to 26 U.S.C.A. § 164 and I.R.C. § 164 for those entities carrying on a trade or business.

**When will the DOI distribute the funds to the DHCC?**

The DOI anticipates that the assessment will be distributed to the DHCC as a lump sum no later than April 15th of the calendar year.

**How does the Reinsurance Program work?**

Insurers who offer coverage in Delaware's individual market are reimbursed by the Reinsurance Program for a percentage of the annual claims which they incur on a per member basis between a specified lower threshold ("attachment point") and upper threshold ("reinsurance cap"), to be determined each year by the DHCC.

Due to these reimbursements and the anticipated improvement in morbidity, it is expected that insurers will incur lower costs on their individual health insurance plans each year, and that those lower costs will then be required to be passed on to consumers in the form of lower premium rates (i.e., prior to the application of federal premium tax credits).

**Who will likely benefit from the Reinsurance Program?**

Consumers in the individual market who do not receive federal premium tax credits APTCs particularly benefit from the lower premium rates.

Consumers in the individual market who do receive APTCs generally experience little to no impact from the lower premium rates. This is because the APTCs are set such that eligible individuals pay no more than a specified percentage of their income for the second-lowest cost silver plan, regardless of the cost of the second-lowest cost silver plan. However, if the lower premium rates for the second-lowest cost silver plan were to be less than the specified percentage of income for certain individuals, consumers would pay the lower amount.

All consumers in the individual market are expected to continue to benefit from increased stability due to an expectation that overall membership in the single risk pool would continue to increase due to lower premium rates.

Please direct questions to doi-invoices@delaware.gov. Include **Attn: 1332 Waiver Assessment Payment** in the subject line.

This Bulletin shall be effective immediately and shall remain in effect unless withdrawn or superseded by subsequent law, regulation or bulletin.

Trinidad Navarro
Delaware Insurance Commissioner

*NOTE: This Bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties, or privileges, nor is it intended to provide legal advice. Readers should consult applicable statutes and rules and contact the Delaware Department of Insurance if additional information is needed.*

*Assessment Form Instructions*

**Delaware Health Insurance Individual Market Stabilization Reinsurance Program**

Total Direct Written Premiums: Report the gross amount of all health and/or accident & health premiums reported in Delaware. The total should equal the company's premiums reported in the annual statement filed with the NAIC during the applicable plan year and the schedule referenced in Note 1 of the form.

Excluded Premiums: Excluded premiums include those expressly set forth by federal law and regulation (see, for example, 26 C.F.R. § 57.2), premiums for federal programs not subject to assessment in Delaware, and premiums expressly excluded in 18 *Del. C.* § 8702(b). Excluded premiums should be specifically reported on the form in the column provided.

How is the assessment due calculated? Multiply 2.75 percent by the net total premium (total premium minus excluded premiums).

**Delaware Health Insurance Individual Market Stabilization and Reinsurance Program Assessment Form**

| | | |
|---|---|---|
| **Company Name:** _____ | | |
| **NAIC Number** _____ | | |
| **Company Address** _____ | | |
| **As Reported Annual Statement** | **Amount** | |
| **Total Direct Premiums Written** | | |
| | | |
| **Excluded Premiums** | | |
| Medicare | | |
| Medicare Supplemental | | |
| Federal Employees Health Benefit Plans | | |
| Stand-alone Dental Insurance | | |
| Stand-alone Vision Insurance | | |
| Accident Only | | |
| Disability Only | | |
| Long Term Care | | |
| Other- | | |
| Other- | | |
| Other- | | |
| Other- | | |
| **Total Excluded Premiums** | | |
| | | |
| **Assessable Premiums** | | Total Direct Premiums Written less Total Excluded Premiums |
| **Assessment Factor** | | 2.75 percent |
| **Assessment Declared** | | Assessable Premiums multiplied by Assessment Factor |
| **Name and title of person responsible for filling out this form** | | Name_____Title_____ |
| **Contact information for person responsible for filling out this form** | | Telephone number_____<br>Email address _____ |