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EMPLOYEE BENEFITS ALERT

UPDATED: EMPLOYERS BEWARE: HEALTH CARE REFORM'S TRANSITIONAL REINSURANCE PROGRAM COULD ADD BIG COSTS

In 2014, as part of Health Care Reform, employers will be facing a new and costly fee related to the law's Transitional Reinsurance Program. Under the Patient Protection and Affordable Care Act (PPACA), during 2014, 2015 and 2016, group health plans are required to make a contribution towards a federally administered Transitional Reinsurance Program. This program creates a reinsurance pool that non-grandfathered individual market insurers can participate in to minimize their risks in covering high expense enrollees, and in turn, pass on reasonable premium rates for individual coverage. The Transitional Reinsurance Program does not directly benefit employers or employer sponsored coverage.

Under the program, employers with fully insured group health coverage will not pay a fee. Instead, the insurer will be responsible, although they may ultimately pass this cost along to employers and plans. For employers offering self insured group health coverage, the plan must pay the fee. While it is expected that such plans will use a third party administrator to remit the fee, the plan or employer will ultimately bear the cost.

Proposed regulations issued in December 2012 estimate the fee for 2014 to be $63 for each person covered by a group health plan. This "covered lives" standard includes both employees and dependents who participate in the plan. Although the regulations propose several alternative methods for counting the number of covered lives, these methods all approximate the number of persons covered by the plan. This program could therefore, result in employers paying millions of dollars, directly or indirectly. In theory these fees should go down in 2015 and 2016, as the program is designed to raise less money each year ($12 billion in 2014, $8 billion in 2015 and $5 billion in 2016). However, for fully insured plans, states are free to set up their own supplemental reinsurance programs (regardless of whether they set up an exchange) and charge additional fees on top of these federal fees.

The Transitional Reinsurance Program fee applies to any group health plan that provides major medical coverage. Proposed regulations define major medical coverage as health coverage that provides a broad range of services and treatments. The regulations clarify that under this definition, the fee does not apply to limited scope and limited extent coverage such as:

The regulations clarify that under this definition, the fee does not apply to limited scope and limited extent coverage such as: stand-alone vision and dental plans; HRAs integrated with a self-insured plan or insured coverage; HSAs and health FSAs; any employee assistance plan, disease-management program, or wellness program that does not provide major medical coverage; stop-loss or indemnity reinsurance policies; and excepted benefits.

At this point, the IRS has indicated that these reinsurance contributions can be deductable as ordinary and necessary business expenses and the Department of Labor has indicated that these contributions would be a valid plan expense under ERISA.

Given the great costs potentially imposed by this program, employers should prepare for this and other provisions of PPACA coming into effect in the coming years.

The Employee Benefits Alert is intended to keep readers current on matters affecting employee benefits and is not intended to be legal advice. If you have any questions about this alert or any other issues relating to employee benefits, please contact ***Kathryn English*** *at 412.566.1226,* ***Elizabeth Goldberg*** *at 412.566.6016,* ***Michael Herzog*** *at 412.566.6130,* ***Sandra Mihok*** *at 412.566.1903,* ***Brandon Richards*** *at 412.566.1263, or* ***Paul Yenerall*** *at 412.566.1944.*