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DRAFT BULLETIN

Comments on this draft bulletin should be sent to Philip.Ermer@maryland.gov no later than August 2, 2018.

TO: ENTITIES SUBJECT TO THE MARYLAND HEALTH CARE ACCESS ACT OF 2018

SUBJECT: MARYLAND HEALTH CARE ACCESS ACT OF 2018 - ASSESSMENT IMPLEMENTATION

DATE: July 2, 2018

The purpose of this bulletin is to set forth the procedures for the collection of the assessment established by the Maryland Health Care Access Act of 2018 (“Act”).¹

Background:

On January 22, 2018, Congress suspended the collection of the federal Health Insurance Providers Fee set forth in § 9010 of the Affordable Care Act (“ACA”) for calendar year 2019.² Subsequent to this action, the Maryland General Assembly established a state assessment to recoup the aggregate amount of the fee that otherwise would have been assessed under § 9010 of the ACA.

For the calendar year 2019 only, entities subject to the Act are subject to an assessment of 2.75% on all amounts used to calculate the entity’s Maryland premium tax liability or the entity’s premium tax exemption value for the calendar year 2018 with respect to products subject to the Act.

The assessment will be collected by the Maryland Insurance Administration (“MIA”) and will be distributed to the Maryland Health Benefit Exchange Fund (“MHBE”) for the purpose of individual health insurance market stabilization. The MHBE will use these funds to administer a state reinsurance program,³ established by a State Innovation Waiver under Section 1332 of the

¹ Chapters 37 and 38 (Maryland Laws of 2018).

² Enacted on January 22, 2018, along with continuing resolution legislation, H.R. 195, Division D – Suspension of Certain Health-Related Taxes, § 4003, which suspends collection of the health insurer provider fee for the 2019 calendar year only.

³ Chapter 3 (Maryland Laws of 2018) established the State Reinsurance Program.

ACA, subject to the approval of the Centers for Medicare & Medicaid Services (“CMS”) and the Internal Revenue Service (“IRS”).⁴

(1) Who is subject to the assessment?

Section 6-102.1(a) of the Insurance Article states that the section applies to:

(a) (1) An insurer, a nonprofit health service plan, a health maintenance organization, a dental plan organization, a fraternal benefit organization, and any other person subject to regulation by the state that provides a product that:

- (i) is subject to the fee under § 9010 of the affordable care act; and
- (ii) may be subject to an assessment by the state; and

(2) a managed care organization authorized under title 15, subtitle 1 of the Health – General Article.

(2) Which products or lines are subject to the assessment?

Premiums for the following products are subject to the fee under § 9010 of the ACA, if offered by any of the entities set forth in § 6-102.1(a) of the Insurance Article:

- Fully Insured Health Benefit Plans
- Stand-Alone Dental Plans
- Stand-Alone Vision Plans
- Medicaid (including CHIP) Plans
- Any other health insurance coverage subject to the fee in § 9010 of the ACA that is subject to state regulation.

Premiums for health products exempt from § 9010 or otherwise exempt from state assessment are not subject to the fee. These include, but are not limited to, the following products:

- Medicare, Medicare Supplement, Federal Employee Health Benefit Plans, Accident Only, Disability Only, Specified Disease, HIP or Other Fixed Indemnity, Long-Term Care, Indemnity Reinsurance and Stop Loss Coverage.

(3) Section 9010(b)(2) of the ACA provides for certain exclusions or modifications to the federal fee with respect to covered entities that do not write net premiums in excess of specified thresholds. Do these exclusions apply to the Maryland assessment?

No. The legislature did not provide for exclusions or modifications to the fee set forth in the Act based upon § 9010(b)(2) of the ACA.

⁴ For more information on the MHBE’s 1332 Waiver Application, please see: <https://www.marylandhbe.com/policy-legislation/public-comment/1332-waiver/>

(4) How is the assessment calculated?

For the calendar year 2019 only, an entity subject to the Act will be subject to an assessment of 2.75% on all amounts used to calculate the entity's Maryland premium tax liability or the entity's premium tax exemption value for products subject to the Act in calendar year 2018. The attached form and instructions includes precise methodology for this calculation.

(5) How should premiums be allocated to Maryland?

Carriers should employ the *same* methodology that is used for premium tax allocation pursuant to §6-102(a) and (d) of the Insurance Article, and COMAR 31.06.01.02.

(6) When will the amount be assessed, and when is the amount due and payable?

The assessment payment is due to the MIA by March 15, 2019. Entities subject to the tax should submit the attached form and remit payment no later than this date.

A nonprofit health service plan subject to the assessment should use the premium tax exemption value from their March 1, 2019 report, subject to any exemptions or exclusions in the Act, to determine its assessment base.

(7) Is there any penalty or fee imposed for late payment or failure to pay?

Yes, penalties and interest will be assessed as set forth in Insurance Article, § 6-108, Annotated Code of Maryland.

(8) Is the assessment tax deductible for entities subject to the Act?

The MIA has requested, but has not yet received, written confirmation from the IRS that the assessment will be treated, for federal tax purposes, as a deductible expense pursuant to 26 U.S.C.A. § 162, I.R.C. § 162 or a deductible tax pursuant to 26 U.S.C.A. § 164, I.R.C. § 164.

(9) When will the MIA distribute the funds to the Maryland Health Benefit Exchange Fund?

The MIA anticipates that the assessment will be distributed to the Maryland Health Benefit Exchange Fund as a lump sum no later than December 31, 2019.

Questions on this bulletin should be emailed to Philip Ermer, Executive Director, Premium Tax and Company Licensing: philip.ermer@maryland.gov or 410-468-2153.

Assessment Form Instructions
(Maryland Health Care Access Act of 2018)

Who should file? Any insurer, nonprofit health service plan, health maintenance organization, dental plan organization, fraternal benefit organization, or any other person subject to regulation by the State that provides a product that is subject to the fee under § 9010 of the Affordable Care Act and is subject to an assessment by the State, and, a managed care organization authorized under title 15, 1 subtitle 1 of the Health – General Article.

What is to be filed? Complete and return the attached Assessment Form reporting health and accident & health direct premiums written in Maryland during 2018, and remit payment by March 15, 2019. Nonprofit health service plans subject to the assessment should use the premium tax exemption value from their March 1, 2019 report, subject to any exemptions or exclusions in the Maryland Health Care Access Act of 2018, to determine their assessment base.

Completed forms should be mailed to the attention of Philip Ermer, Executive Director Premium Tax and Company Licensing, at the following address: Maryland Insurance Administration, 200 Saint Paul Place, Ste. 2700, Baltimore, MD 21202, or emailed to Philip.Ermer@maryland.gov.

How are payments to be made? An assessment payment, separate from other premium tax payments, can be made by mailed check or ACH transfer to: Maryland Insurance Administration, 200 Saint Paul Place, Ste. 2700, Baltimore, MD 21202. If mailing a check, please mark “Health Care Assessment.” Alternatively, payment can be made through the NAIC OPT_{ins} website now available for Maryland premium tax payments.

Penalties and interest will be assessed for late payments or underpayments as set forth in Insurance Article, § 6-108, Annotated Code of Maryland.

Total Direct Written Premiums: Report the gross amount of all health and/or accident & health premiums reported in Maryland. The total should equal the company’s premiums reported in the 2018 annual statement filed with the NAIC and, in particular, 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, ACA § 9010(h)(3) and 26 C.F.R. §57.2) and premiums for federal programs not subject to assessment in Maryland. Excluded premiums should be specifically reported on the form in the column provided with a reference to the reported line of business on the schedule referenced in Note 1 from which it is deducted.

How is the assessment due calculated? Subtract the total excluded premiums from the total direct written premiums, and multiply the difference by 2.75%.

In addition to these instructions, please review § 6-102.1, Insurance Article, and Bulletin 18-XX for additional information. Questions on this form should be referred to Philip Ermer at 410-468-2153, or by email to philip.ermer@maryland.gov.

DRAFT PROPOSED FORM

As Reported Annual Statement	Amount	
Total Direct Premiums Written		Total of all business lines for 2018 from the schedule described in Note 1 .
Excluded Premiums		Identify line or column heading from which premium is excluded
Medicare		
Medicare Supplemental		
Federal Employees Health Benefit Plans		
Accident Only		
Disability Only		
Specified Disease		
HIP or Other Fixed Indemnity		
Long Term Care		
Stop Loss		
Indemnity Reinsurance		
Other-		
Other-		
Other-		
Other-		
Total Excluded Premiums		
Assessable Premiums		Total Direct Premiums Written less Total Excluded Premiums
Assessment Factor	2.75%	
Assessment Declared		Assessable Premiums multiplied by Assessment Factor

Note 1:

Source information should be from the 2018 annual statutory statement filed with the NAIC. Specific schedules to use are as follows:

Health, MCO, HMO	Exhibit of Premiums, Enrollment and Utilization(a) (Maryland) / (Full Schedule)
Property and Casualty /Accident and Health	Exhibit of Premiums and Losses (Maryland) / (Lines 13, 14, 15.1, 15.2, 15.3, 15.4, 15.5, 15.6, 15.7 & 15.8)
Life / Accident and Health	Exhibit of Premiums and Losses (Maryland) / (Columns: 24, 24.1, 24.2, 24.3, 24.4, 25.1, 25.2, 25.3, 25.4 & 25.5)
Fraternal Societies	Exhibit of Premiums and Losses (Maryland) / (Columns: 24, 25.1, 25.2, 25.3, 25.4, 25.5 & 25.6)