FEHB Program Carrier Letter
All FEHB Carriers

U.S. Office of Personnel Management
Healthcare and Insurance

Letter No. 2013-15 **Date: May 23, 2013**

Fee-for-Service [11] Experience-rated HMO [11] Community-rated [13]

SUBJECT: Affordable Care Act: Transitional Reinsurance Program Fee

This Carrier Letter provides guidance on the Transitional Reinsurance Program Fee established under § 1341of the Patient Protection and Affordable Care Act, Public Law 111–148, as amended by the Health Care and Education Reconciliation Act, Public Law 111–152, (Affordable Care Act) for Federal Employees Health Benefit (FEHB) Program carriers.

Under section 1341 of the Affordable Care Act and its implementing regulations, all "contributing entities," which include health insurance issuers and self-insured group health plans, must pay a fee to fund the transitional reinsurance program, which will benefit certain issuers of health insurance coverage in the individual market. The transitional reinsurance program, a state-based program, is designed to provide issuers in the individual market with greater payment stability by partially offsetting risk for high-cost enrollees from 2014 through 2016. On March 23, 2012, the Department of Health and Human Services (HHS) issued the Premium Stabilization Rule which, among other things, laid out a regulatory framework for the transitional reinsurance program. On March 11, 2013, HHS issued final regulations governing 2014 payment parameters for the program. Carriers should review the HHS final rules and other applicable guidance on this provision available here: http://www.gpo.gov/fdsys/pkg/FR-2012-03-23/pdf/2012-6594.pdf; https://www.federalregister.gov/articles/2013/03/11/2013-04902/patient-protection-and-affordable-care-act-hhs-notice-of-benefit-and-payment-parameters-for-2014.

Additional State Contribution Requirements May be Preempted

The final regulations allow states operating reinsurance programs to elect to collect more than the amounts based on the national contribution rate set forth in the annual HHS notice of benefit and payment parameters for administrative expenses of the applicable reinsurance entity or for additional reinsurance payments. Several carriers have inquired as to the interaction of 5 U.S.C. §8909(f), which provides generally that no tax, fee or other monetary payment may be imposed on an FEHB carrier by a state or local entity. The HHS final regulations issued on March 11, 2013 address this comment by asserting that neither the statute nor the regulations give States any additional authority to collect funds from contributing entities. Accordingly, if applicable states attempt to collect additional funds, and if those state collections are encompassed by the prohibition in 5 U.S.C. §8909(f), carriers should not pay these additional amounts. Carriers should contact their OPM contract specialist in the event states establish additional payment parameters.

Transitional Reinsurance Fees are an Allowable Cost and May be Included in Rates

OPM has determined that the transitional reinsurance fee will be an allowable cost to the FEHB Program as an expense to the "overall operation of the business" according to the FEHB Contract Section 3.2(b)(2)(iii). For the FEHB Program, the fee will be applied for the first time for plan year 2014. Carriers are not required to make fee payments for individuals who are enrolled in any part of Medicare if Medicare is the primary payer of services for those individuals. A carrier's loading must be adjusted to recognize that the fee is not applicable for those FEHB members where Medicare coverage (Part A, Part B, or both) is primary.

Experience-Rated Carriers

Experience-rated (ER) plans are required to account for these administrative expenses in their calculation of premium rates and report it on the annual accounting statement. Carriers shall certify the accuracy of the new expense beginning with the Annual Accounting Statement for 2014. If a plan cannot cover the added expenses within the proposed expense limitation, we will consider these expenses outside the limit. Justification for these expenses should be included in your expense limitation proposal.

Community-Rated Carriers

Community-rated (CR) plans may include this fee in the community rate purchased by the FEHB Program. If a community rated carrier's rating methodology includes adding a load for these fees, the carrier is allowed to include the load in the rate build up for FEHB in accordance with the methodology. If a carrier does not load the rate for other groups subject to the fees, the carrier cannot load the FEHB rate.

Questions

If you have any questions regarding the transitional reinsurance fee as it relates to the FEHB Program, you may contact Wen Fu at Wenqiong.Fu@opm.gov or 202-606-0004 or Amber Hudson at amber.hudson@opm.gov or 202-606-2232. Please note that HHS is the agency responsible for the administration and collection of the fee.

Sincerely

John O'Brien
Director
Healthcare and Insurance