

**America's Health
Insurance Plans**

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January 21, 2014

Yvette Lawrence
Internal Revenue Service
Room 6129
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Notice and Request for Comments Regarding Form 8963 (OMB 1545-2249)

Submitted Electronically: Yvette.B.Lawrence@irs.gov

Dear Ms. Lawrence:

America's Health Insurance Plans (AHIP) is writing in response to the Notice and Request for Comments regarding Form 8963 and Instructions for informational reporting to the Internal Revenue Service (IRS) with respect to the health insurance provider fee. The fee was enacted by Section 9010 of the Affordable Care Act (ACA) and is effective in 2014. Covered health insurance entities will use Form 8963 to report net premiums written and other information thereby allowing the IRS to calculate the amount of the health insurer fee that is owed by the entity.

Entities Not Filing Financial or MLR Reports

AHIP supports use of the National Association of Insurance Commissioner's Supplemental Health Care Exhibit (SHCE) and the Center for Consumer Information and Insurance Oversight's Medical Loss Ratio Annual Reporting Form (MLR Form) as the primary sources of information regarding premiums and other information that must be included on Form 8963. In addition, we agree that entities that do not file an SHCE or MLR Form should be permitted to use direct premiums written information from any equivalent form required by applicable state or federal law.

There are, however, certain entities that do not file any of the financial or MLR reports identified in the Instructions with either federal or state regulatory authorities (e.g., certain Medicaid plans). We recommend that the Form 8963 Instructions indicate that any entity that does not file the SHCE, MLR Form or other equivalent reporting form are still required to submit Form 8963 and provide information regarding net premiums written. If the entity is part of a controlled

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group, it should use the same process to determine the amount of net premiums written as other entities in the controlled group that do file an SHCE, MLR Form or equivalent form.

Reporting Excluded Health Insurance Coverage

We agree with the reporting format set forth in Schedule A of Form 8963 whereby covered entities will report: (1) direct premiums written; (2) MLR rebates; (3) stand-alone dental or vision direct premiums written; (4) net premiums written; and (5) the amount of any net premiums written attributable to certain entities that are partially exempt from the fee (i.e., entities qualifying under Code Sections 501(c)(3), (4), (26) or (29)).

The use of public reporting formats such as the SHCE and MLR Form and the disclosure of the amounts used to calculate net premiums written is critical to promote transparency with respect to the determination and payment of the insurer fee. Covered entities should be required to fully disclose how they determined the amount of net premiums written subject to the fee. While Form 8963 (in its present draft) takes important steps in this regard, we believe additional information disclosure is necessary to appropriately apply the statute and accomplish this purpose.

AHIP recommends that one additional column on Form 8963 be provided for reporting the total amount of direct premiums written included in the SHCE or MLR form (or equivalent reporting form) that are reported as direct premiums written but are not premiums for health insurance coverage subject to the fee. For example, the preamble to the Final Rules implementing ACA Section 9010 states that Medicaid Managed Care Organizations may exclude long-term care premiums from the fee and that “(t)o the extent Medicaid plan providers can separately identify premiums received for long-term care, these amounts are not for health insurance and are not included in net premiums written [subject to the fee].” (78 Fed. Reg. 71483). A similar exclusion from the fee applies to premiums written for non-US health insurance risks.

Premiums received by a covered health insurance entity for such excluded coverage may be reflected in the SHCE or MLR Report (or other equivalent reporting form) and seemingly would have to be recorded in Form 8963, Column (f) as “direct premiums written.” Our recommendation is that Form 8963 include a column for covered entities to report the total amount of premiums included in direct premiums written (Column (f)) that should be excluded from net premiums written (Column (i)) because they are received for insurance coverage that is not subject to the fee. Identification of such premium amounts will facilitate reconciliation (and audit) of the amounts reported on the SHCE and other source documents with the premium amounts that the covered entity believes is subject to the fee.

As an alternative, if Form 8963 is not modified, we recommend that: (a) the Form 8963 Instructions clarify that Column (f) should include only direct premiums written that are subject

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to the fee and (b) covered entities include an attachment with the information return that identifies any amounts that the entity has reported as direct premiums written on the SHCE or MLR Report or on a similar state or federal reporting form but which the entity excludes from direct premiums written on Form 8963, Column (f) because the coverage is not subject to the fee.

AHIP also recommends that any amounts excluded by a covered entity from direct premiums written be made publically available by the IRS.

Reporting Retrospective Rating Credits and Other Rebates

As discussed above, Form 8963 requires entities to report and deduct MLR rebates from the amount of direct premiums written in order to determine net premiums written subject to the fee. There are additional credits or rebates that may be paid by a covered entity to policyholder in addition to MLR rebates that should be deducted from direct premiums written. For example, covered entities may pay retrospective rating credits back to a policyholder. These amounts are included as direct premiums written on the SHCE and MLR report. Because they are amounts initially collected as premiums and subsequently refunded, they should not be subject to the fee.

AHIP recommends modifying Form 8963, Column to read “Rebates and Other Adjustments” and that the Instructions are amended to clarify that the amount of MLR and any other rebates paid back to policyholders should be included in that column.

Exempt Health Insurance Issuers

ACA Section 9010(c) excludes certain entities from the definition of “covered entities” subject to the fee including situations where all of the following requirements are satisfied: (a) the entity is incorporated as a non-profit corporation under state law; (b) the organization does not engage in lobbying or political activities; (c) no part of the net earnings of the entity inure to the benefit of any private individual; and (d) more than 80 percent of the entity’s gross revenues are from programs targeting low-income, elderly or disabled individuals.

The number of entities claiming an exemption will vary each year -- for example, depending on whether the entity satisfies the “more than 80 percent of gross revenues” test. As a result, it is important for the IRS to annually identify and track those health insurance issuers that are claiming the exemption under Section 9010(c)(2).

AHIP recommends that non-profit entities claiming an exemption from the fee under Section 9010(c)(2) file Form 8963 or a similar information report certifying that they qualify for the exemption. A designated representative of the entity should sign the report certifying under penalty of perjury that, to the best of their knowledge and belief, the information regarding the exemption claim is true and correct (similar to the verification required on Form 8963). In

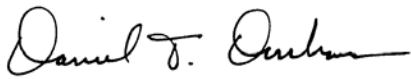
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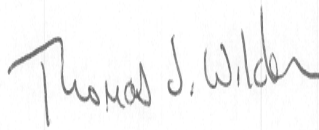
addition, information identifying those entities that claim an exemption under Section 9010(c)(2) should be made available to the public as contemplated by ACA Section 9010(g)(4).

AHIP appreciates the opportunity to provide comments on Form 8963 and the reporting process for the health insurer fee. Please feel free to contact us if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Daniel T. Durham". The signature is fluid and cursive, with a long horizontal stroke at the end.

Daniel T. Durham
Executive Vice President
Policy and Regulatory Affairs

A handwritten signature in dark ink, appearing to read "Thomas J. Wilder". The signature is cursive, with a large initial "T" and a distinct "W" at the end.

Thomas J. Wilder
Senior Counsel