

DEPARTMENT OF TREASURY
HEALTH INSURANCE CLAIMS ASSESSMENT ACT
PROCEDURES REGARDING COLLECTION AND RECORDKEEPING
EMERGENCY RULES

Filed with the Secretary of State on: April 30, 2012

These rules take effect upon filing with the Secretary of State, and shall remain
in effect for 180 days.

(By the authority conferred on the Department of Treasury
by 2011 PA 142, MCL 550.1736(2))

FINDING OF EMERGENCY

These rules are promulgated by the department of treasury to provide certain clarifications and establish certain procedures regarding the collection by carriers, third-party administrators, and self-insured entities of the 1% assessment levied pursuant to 2011 PA 142, MCL 550.1731 et seq., known as the Health Insurance Claims Assessment Act (HICAA), as well as the recordkeeping requirements with respect to such assessment.

The passage of HICAA was the result of anticipated federal action that would disallow the current 6% use tax on Medicaid contracted health plans and Medicaid managed care organizations as a means to generate approximately \$400 million in state revenue to support state Medicaid programs, and to be used as a match for federal Medicaid funds. HICAA imposes a broad-based assessment which is intended to satisfy the federal requirements as a replacement for the current use tax model.

Since HICAA was enacted, certain critical tax compliance issues have been raised by parties subject to the HICAA assessment. Because HICAA was designed to generate a specific amount of revenue to be used for the purpose of supporting state Medicaid programming and qualifying for federal Medicaid dollars, expected compliance with the statute is critical, and even low levels of non-compliance may adversely impact the state's budget. If less revenue than expected is generated due to non-compliance, the state will have insufficient funds to support current Medicaid programming and it will be unable to obtain the maximum amount of federal Medicaid funds that would otherwise be available. Accordingly, the state will be forced to fund Medicaid programming from other budget sources, or, alternatively, it will be necessary for the state to cut Medicaid programming, critically impacting the state's ability to provide for the public health and welfare.

The department of treasury therefore finds that the preservation of the public health and welfare requires the promulgation of emergency rules without following the notice and participation

procedures required by sections 41, 42, and 48 of 1969 PA 306, MCL 24.241, MCL 24.242, and MCL 24.248.

Rule 1. Neither a carrier nor a third-party administrator is required to collect the assessment levied under this Act from an individual, employer, or group health plan pursuant to Section 3a of the Act; the collection of the assessment from these parties by carriers and third-party administrators is permissive. However, if a carrier or third-party administrator determines to collect the assessment from an individual, employer, or group health plan, such collection may only be undertaken pursuant to the methodology requirements set forth in Section 3a. For purposes of this rule, “Act” means the Health Insurance Claims Assessment Act, 2011 PA 142, MCL 550.1731 et seq.

Rule 2. (1) The department, through its field auditors and other employees, may examine the books, records and papers of any person liable for the assessment.

(2) Every person subject to the assessment must keep and preserve suitable and adequate records to enable such person, as well as the state, to determine the correct amount of the assessment for which the person is liable. Failure to produce and keep records for the purpose of examination by the department will be considered willful noncompliance with a tax law.

(3) A person subject to the assessment must retain all quarterly worksheets as well as all source documents used in the preparation of the quarterly worksheets and the annual returns filed pursuant to the Act. Source documents may include, but are not limited to, documents and records maintained in the ordinary course of business containing claims-related information and statements or billings for medical services. A person subject to the assessment must also retain all documents and records used to determine eligibility for, and the amount of, each of the exclusions from the assessment indicated on the quarterly worksheets and annual returns, including, but not limited to, documents and records supporting recoveries against claims, claims-related expenses, claims paid for non-residents, claims paid for services not performed in Michigan, reimbursements made to individuals under federally authorized health spending accounts, and claims paid pursuant to accident, disability, long-term care, automobile, workers’ compensation, or property and casualty coverage.

Rule 3. For purposes of the Act, a Michigan “resident” is an individual who is domiciled in the state of Michigan on the date that the service in question is performed. “Domicile” means the place where an individual has his or her fixed, permanent and principal home to which he or she returns or intends to return. An individual’s domicile in one place continues until a different domicile is established. A rebuttable presumption shall exist that an individual’s home address, as maintained in the ordinary business records of a carrier or third party administrator, indicates the domicile of that individual under this definition. Example: An individual who is domiciled in Michigan, but attends college in another state, is a Michigan resident for purposes of the Act. If that individual obtains health services in Michigan while home between semesters, a “paid claim” for the performance of those services will be subject to the assessment under the Act.

MICHIGAN DEPARTMENT OF TREASURY

Treasurer

Pursuant to Section 48(1) of 1969 PA 306, as amended, MCL 24.248(1), I hereby concur in the finding of the Department of Treasury that circumstances creating an emergency have occurred and that protection of the public health and welfare requires the promulgation of the above rules pertaining to the Health Insurance Claims Assessment Act.

Rick Snyder, Governor

Date