COMPARATIVE EFFECTIVENESS RESEARCH FEE

Comparative Effectiveness Research Fees (PCORI Fees)

The Affordable Care Act (ACA) created the Patient-Centered Outcomes Research Institute to help patients, clinicians, payers and the public make informed health decisions by advancing comparative effectiveness research. The Institute's research is funded, in part, by fees paid by health insurance issuers and sponsors of self-insured health plans. These fees are widely known as Patient-Centered Outcomes Research Institute fees (**PCORI fees**), although they may also be called PCOR fees or comparative effectiveness research (CER) fees.

WHEN ARE THE PCORI FEES EFFECTIVE?

The PCORI fees apply for **plan years ending on or after Oct. 1, 2012**, through **plan years ending before Oct. 1, 2019**. For calendar year plans, the fees will be effective for the 2012 through 2018 plan years.

Issuers and plan sponsors will be required to pay the PCORI fees annually on IRS Form 720 by July 31 of each year. It will generally cover plan years that end during the preceding calendar year. **Thus, the next deadline for filing Form 720 will be July 31, 2019, for plan years ending in 2018**.

HOW MUCH ARE THE PCORI FEES?

Using Part II, Number 133 of Form 720, issuers and plan sponsors will be required to report the average number of lives covered under the plan separately for specified health insurance policies and applicable self-insured health plans. That number is then multiplied by the applicable rate for that tax year, as follows:

- **$1** per covered life for plan years ending before Oct. 1, 2013 (that is, 2012 for calendar year plans).
- **$2** per covered life for plan years ending on or after Oct. 1, 2013, and before Oct. 1, 2014.
- **$2.08** per covered life for plan years ending on or after Oct. 1, 2014, and before Oct. 1, 2015.
- **$2.17** per covered life for plan years ending on or after Oct. 1, 2015, and before Oct. 1, 2016.
- **$2.26** per covered life for plan years ending on or after Oct. 1, 2016, and before Oct. 1, 2017
- **$2.39** per covered life for plan years ending on or after Oct. 1, 2017, and before Oct. 1, 2018
- **$2.45** per covered life for plan years ending on or after Oct. 1, 2018, and before Oct. 1, 2019

The PCORI fees are based on the average number of covered lives under the plan or policy. This generally includes employees and their enrolled spouses and dependents. Individuals who are receiving **continuation coverage** (such as COBRA coverage) must be included in the number of covered lives under the plan in calculating the PCORI fee. The final regulations outline a number of alternatives for issuers and plan sponsors to determine the average number of covered lives.

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WHAT POLICIES AND PLANS ARE SUBJECT TO PCORI FEES?

The PCORI fees generally apply to insurance policies providing accident and health coverage and self-insured group health plans. The final regulations contain some exceptions to this general rule and also clarify how the PCORI fees apply to certain types of health coverage arrangements. For example, the PCORI fees do not apply if substantially all of the coverage under a plan or policy is for excepted benefits, as defined under HIPAA. In addition, the PCORI fees may apply to retiree-only plans and policies, even though retiree-only coverage is exempt from many of the ACA's other requirements.

-Health Insurance Policies and Health Plans

The PCORI fees apply to "specified health insurance policies" and "applicable self-insured health plans." ACA broadly defines these terms as follows:

- *Specified Health Insurance Policy*—An accident or health insurance policy (including a policy under a group health plan) issued with respect to individuals residing in the United States, including prepaid health coverage arrangements.
- *Applicable Self-Insured Health Plan*—A plan providing accident or health coverage, any portion of which is provided other than through an insurance policy, which is established or maintained by:
    - One or more employers for the benefit of their employees or former employees;
    - One or more employee organizations for the benefit of their members or former members;
    - Jointly by one or more employers and one or more employee organizations for the benefit of employees or former employees;
    - A voluntary employees' beneficiary association (VEBA); or
    - Other specified organizations, including a multiple employer welfare arrangement (MEWA).

-Governmental Entities

Governmental entities that are health insurance issuers or sponsors of self-insured health plans are subject to the PCORI fees, except the fees do not apply to "exempt governmental programs"—Medicare, Medicaid, the Children's Health Insurance Program (CHIP) and any program established by federal law to provide medical care (other than through insurance policies) for members of the Armed Forces or veterans or for members of Indian tribes.

-Excepted Benefits

The PCORI fees do *not* apply if substantially all of the coverage under a plan is for excepted benefits, as defined under HIPAA. Excepted benefits include, for example, stand-alone dental and vision plans, accident-only coverage, disability income coverage, liability insurance, workers' compensation coverage, credit-only insurance or coverage for on-site medical clinics.

****A health FSA qualifies as an excepted benefit if:**

(1) Other group health plan coverage, not limited to excepted benefits, is made available to the eligible class of participants; and

(2) The maximum benefit payable under the FSA to any eligible participant does not exceed two times the participant's salary reduction election (or, if greater, $500 plus the amount of the salary reduction election).

-Retiree Health Plans

Although stand-alone retiree health plans are generally exempt from many of ACA's requirements, sponsors and issuers of these plans are subject to the PCORI fees, unless the plan qualifies as an excepted benefit under HIPAA.

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-Continuation Coverage

If continuation coverage under COBRA (or similar continuation coverage under federal or state law) provides accident and health coverage, the coverage is subject to ACA's PCORI fees.

-Multiple Health Plans

The final regulations address how the PCORI fees apply when an employer sponsors more than one health plan for its employees (for example, a full-insured major medical insurance policy and a self-insured prescription drug plan). As a general rule, an issuer or plan sponsor may not disregard a covered life when calculating its PCORI fees merely because that individual is also covered under another specified health insurance policy or applicable self-insured plan.

However, multiple self-insured arrangements established and maintained by the same plan sponsor with the same plan year are subject to **a single fee**. For example, if a plan sponsor establishes or maintains a self-insured arrangement providing major medical benefits, and a separate self-insured arrangement with the same plan year providing prescription drug benefits, the two arrangements may be **treated as one applicable self-insured health plan** so that the same life covered under each arrangement would count as only one covered life under the plan for purposes of calculating the fee.

-HRAs and Health FSAs

HRAs and health FSAs are not completely excluded from the obligation to pay PCORI fees. However, the final regulations provide two special rules for plan sponsors that provide an HRA or health FSA. Under these special rules:

(1) If a plan sponsor maintains only an HRA or health FSA (and no other applicable self-insured health plan), the plan sponsor may treat each participant's account as covering a single life. This means that the plan sponsor is not required to count spouses or other dependents.

(2) An HRA is not subject to a separate research fee if it is integrated with another self-insured plan providing major medical coverage, provided the HRA and the plan are established and maintained by the same plan sponsor and have the same plan year. This rule allows the sponsor to pay the PCORI fee only once with respect to each life covered under the HRA and other plan. However, if an HRA is integrated with an insured group health plan, the plan sponsor of the HRA and the issuer of the insured plan will both be subject to the research fees, even though the HRA and insured group health plan are maintained by the same plan sponsor.

The same analysis applies to health FSAs that do not qualify as excepted benefits.

-Employee Assistance, Disease Management and Wellness Programs

Employee assistance programs (EAPs), disease management programs and wellness programs that do not provide significant benefits in the nature of medical care or treatment are not subject to the PCORI fees. This exception also covers an insurance policy to the extent it provides for an EAP, disease management program or wellness program, if the program does not provide significant benefits in the nature of medical care or treatment.

WHO MUST PAY THE PCORI FEES?

The entity that is responsible for paying the PCORI fees depends on whether the plan is insured or self-insured.

- For insured health plans, the **issuer** of the health insurance policy is required to pay the research fees.
- For self-insured health plans, the research fees are to be paid by the **plan sponsor**.

The Department of Labor (DOL) has advised that, because the PCORI fees are imposed on the plan sponsor under ACA, it is not permissible to pay the fees from plan assets under ERISA, although special circumstances may exist in limited situations. On Jan. 24, 2013, the DOL issued a set of frequently asked questions (FAQs) regarding ACA implementation that include a limited exception allowing multiemployer plans to use plan assets to pay PCORI fees (unless the plan document specifies another source of payment for the fees).

When two or more related employers provide health coverage under a single self-insured plan, the employer responsible for the PCORI fees is the one designated in the plan documents as the plan sponsor (or as the plan sponsor for purposes of reporting the PCORI fees). This designation must be made by the due date for reporting the research fees, which is July 31 of each year for plan years ending in the preceding calendar year. If this designation is not made on time, then each employer is required to report and pay PCORI fees with respect to its own employees.

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Patient-Centered Outcomes Research Institute Fees (PCORI Fees)

HOW ARE THE PCORI FEES CALCULATED?

The PCORI fees are based on the **average number of lives covered** under the plan or policy. This generally includes employees and their enrolled spouses and dependents. Individuals who are receiving **continuation coverage** (such as COBRA coverage) must be included in the number of covered lives under the plan in calculating the PCORI fee.

The final regulations outline a number of alternatives for issuers and plan sponsors to determine the average number of covered lives. As a general rule, plan sponsors and issuers may only use one method for determining the average number of covered lives for each plan year.

-Insured Health Plans

Health insurance issuers have the following options for determining the average number of covered lives:

- *The Actual Count Method*—This method involves calculating the sum of lives covered for each day of the plan year and dividing that sum by the number of days in the plan year.
- *The Snapshot Method*—This method involves adding the total number of lives covered on a date in each quarter of the plan year, or an equal number of dates for each quarter, and dividing the total by the number of dates on which a count was made.
- *The Form Method*—As an alternative to determining the average number of lives covered under each individual policy for its respective plan year, this method involves determining the average number of lives covered under all policies in effect for a calendar year based on the data included in the National Association of Insurance Commissioners Supplemental Health Care Exhibit (Exhibit) that some issuers are required to file (called the *member months method*). For issuers that are not required to file an Exhibit, there is a similar available method that uses data from equivalent state insurance filings (called the *state form method*).

-Self-insured Health Plans

Sponsors of self-insured plans may determine the average number of covered lives by using the *actual count method* or the *snapshot method*. For purposes of the snapshot method, the number of lives covered on a designated date may be determined using either the **snapshot factor method** or the **snapshot count method**.

- *Snapshot factor method*. Under the snapshot factor method, the number of lives covered on a date is equal to the sum of: (1) the number of participants with self-only coverage on that date; plus (2) the product of the number of participants with coverage other than self-only coverage on the date and 2.35.
- *Snapshot count method*. Under the snapshot count method, the number of lives covered on a date equals the actual number of lives covered on the designated date.

Alternatively, plan sponsors may use the ***Form 5500 method***, which involves a formula using the number of participants reported on the Form 5500 for the plan year.

For HRAs and health FSAs that are required to be reported separately (for example, because they are integrated with an insured group health plan and do not qualify as excepted benefits), the regulations simplify the determination of average number of covered lives by allowing plan sponsors to assume one covered life for each employee with an HRA or health FSA.

In addition, a self-insured plan that provides accident and health coverage through fully-insured and self-insured options may determine the plan's PCORI fees by disregarding the lives covered solely under the fully-insured options.

HOW ARE THE PCORI FEES REPORTED AND PAID?

In general, the PCORI fees are assessed, collected and enforced like taxes under the Internal Revenue Code. Issuers and plan sponsors must report and pay the research fees annually on **IRS Form 720** (Quarterly Federal Excise Tax Return). Recently, the IRS released an updated Form 720 that includes a section where issuers and plan sponsors will report and pay the PCORI fee. The IRS also released updated instructions along with the revised form.

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Form 720 and full payment of the research fees will be due by **July 31** of each year. It will generally cover plan years that end during the preceding calendar year. Thus, the first possible deadline for filing Form 720 was July 31, 2013. **The next deadline for filing Form 720 will be July 31, 2019, for plan years ending in 2018**.

Deposits are not required for this fee, so issuers and plan sponsors are not required to pay the fee using Electronic Federal Tax Payment System (EFTPS). However, if the fee is paid using EFTPS, the payment should be applied to the second quarter.

On Jan. 24, 2013, the DOL, HHS and the Treasury (Departments) issued FAQs that address payment of PCORI fees from plan assets. In general, because the fee is imposed on the plan sponsor and not on the plan itself, the plan sponsor must pay the fee outside the plan. This means that **plan assets cannot be used to pay the fee**.

On May 31, 2013, the IRS issued a Chief Counsel Memorandum addressing the deductibility of the PCORI Fees. According to the IRS, the required PCORI fee will be an ordinary and necessary business expense paid or incurred in carrying on a trade or business and, therefore, will be deductible under section 162 of the Internal Revenue Code.

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