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EPIC

compliance alert

ALERT: IRS Updates Form 720 for PCORI; Fees are Tax-Deductible

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

Health insurers and self-insured plan sponsors are required to report and pay the PCORI fees annually by using IRS Form 720 (Quarterly Federal Excise Tax Return). The report and fees are due starting with the first plan year that ends on or after **October 1, 2012**. For calendar year plans, this means the first due date is July 31, 2013. For a plan year ending July 31, 2013, the first due date is July 31, 2014.

REPORTING PCORI FEES ON FORM 720

Form 720 and the instructions are posted on the IRS website at http://www.irs.gov/uac/Form-720,-Quarterly-Federal-Excise-Tax-Return.

Using Part II, Number 133 of Form 720, insurers and plan sponsors are 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:

(a) **$1** for plan years ending before Oct. 1, 2013 (that is, 2012 for calendar year plans).

(b) **$2** for plan years ending on or after Oct. 1, 2013 and before Oct. 1, 2014.

(c) For plan years ending on or after Oct. 1, 2014, the rate will increase for inflation.

The fees for specified health insurance policies and applicable self-insured health plans are then combined to equal the total tax owed.

Insurers or plan sponsors that file Form 720 only to report the PCORI fee will not need to file Form 720 for the first, third or fourth quarter of the year. Insurers or plan sponsors that file Form 720 to report quarterly excise tax liability (for example, to report the foreign insurance tax) should only make an entry on the line for the PCORI fee during the second quarter filing. See "Background," below for more information about affected plans and methods for calculating the number of participants and the amount of the required PCORI fee.

PCORI FEES ARE TAX-DEDUCTIBLE

In a recent memorandum (http://www.irs.gov/pub/irs-utl/AM2013-002.pdf), the IRS issued a ruling concluding that, in general, the payment of the PCORI fee should be tax deductible as an ordinary business expense. This is good news and guidance for employers as they calculate and determine their PCORI fee liability.

BACKGROUND ON PCORI FEES

What Health Plans are Subject to the Fee?

There are two types of health plans subject to the PCORI fee:

- **Specified Health Insurance Policy**: A health insurance policy, including grandfathered and non-grandfathered group plans (PPOs, HMOs, Rx, etc.) for employees, retirees and COBRA participants. Policies for "HIPAA-excepted benefits" (discussed below) are exempt. Insurers are responsible for calculating and paying the fee for all specified health insurance policies.
- **Applicable Self-Insured Health Plan**: A self-insured health plan established or maintained by employers for their workers and/or retirees. Plans for "HIPAA-excepted benefits" (discussed below) are exempt. The plan sponsor (employer) is responsible for calculating and paying the fee for its self-insured health plans. The PCORI fee applies to stand-alone Health Reimbursement Accounts (HRAs). *However, for an HRA that is integrated with a self-insured major medical plan, the fee applies only once* to the integrated plan (due to the "multiple self-insured plans" non-duplication rule). However, *if the HRA is integrated with an insured medical plan, the employer will pay the fee with respect to the HRA, while the carrier will pay the fee for the insured plan.*

What Health Plans are NOT Subject to the Fee?

The fee does NOT apply to:

- Policies or plans providing benefits that are HIPAA-excepted benefits. HIPAA-excepted benefits generally are stand-alone dental and vision plans; on-site medical clinics; and health care FSAs (provided that the employee has other group health coverage available and the employer does not contribute more than $500 to the health care FSA).
- Employee assistance plans, disease management programs, or wellness programs, provided that the plan or program does not provide significant benefits for medical care or treatment.
- Health Savings Accounts (HSAs).
- Stop-loss insurance policies.

Calculating the Fee

Employers with applicable self-insured health plans must determine how to calculate the PCORI fees for their self-insured health plans. The regulations provide that multiple self-insured plans that are (a) sponsored by the same employer, (b) cover the same participants, and (c) have the same plan year are considered one plan for PCORI fee purposes. For instance, the employer will pay the $1 fee only once for each employee (retiree) and dependent covered by a self-insured medical plan with a self-insured prescription drug plan.

Calculating the Number of Participants

The regulations permit several methods to count the average number of plan participant, but the same method must be used consistently through the plan year. It is permissible to change to one of the other approved methods for the following year.

- **Average Count Method:** Count the number of covered lives each day of plan year, then divide by the number of days in the plan year.
- **Snapshot Count Method**: Count the number of covered lives on one day each quarter, then divide by 4. Alternatively, the employer may count covered lives on several days each quarter, as long as same number of days is used each quarter, and then divide by the number of days on which lives were counted. Many employers will find this method most convenient by simply taking the participant count from a monthly eligibility file or ASO bill, as long as all covered family members are included.

- **Form 5500 Method:** Add the participant counts at beginning and ending of the plan year (as reported on Form 5500). This method eliminates the need to count dependents since the IRS will assume the sum of the beginning and ending year counts roughly equals employees plus dependents.

For health care FSAs and HRAs that do not qualify for the exemptions explained above, count only the number of employee participants and disregard the dependents.

For further information on this or other topics, please contact your EPIC Benefits Consulting Team.

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