

employee benefits lawflash

July 24, 2013

PCOR Trust Fund Fee Due Soon for Many Plans

Calendar-year plans should use updated IRS Form 720 and related instructions to file by July 31 deadline.

Under the Affordable Care Act (ACA), for plan years ending on or after October 1, 2012, plan sponsors of self-insured plans and insurers are subject to an annual fee per covered life—known as the PCOR Trust Fund Fee (PCORTF Fee or the Fee)—which will be used to fund the Patient-Centered Outcomes Research Institute (PCORI). For the first year, the Fee is \$1 per covered life; it will increase to \$2 per covered life for the second year and will increase each year thereafter based on a standard tied to the National Health Expenditure Accounts until it expires in 2019.

Paying the Fee

The Fee must be paid no later than July 31 of the calendar year immediately following the last day of the plan year to which the Fee applies. As such, for calendar-year plans, the Fee is first due on July 31, 2013 for the January 1, 2012 plan year. Plan sponsors will make this payment by filing a Form 720 “Quarterly Federal Excise Return” on an annual basis (not on a quarterly basis). Recently, the Form 720 was updated to accommodate the PCORTF Fee filing and payment in time for the July 31, 2013 deadline.

On the revised Form 720, an employer (plan sponsor) will report the average number of lives covered under the plan. To determine the average number of lives to be reported, an employer may use the actual count method, the snapshot count method, or the Form 5500 method.¹ The tax will be paid with the return, and deposits are not required for this Fee. The revised Form 720 and related instructions are available at <http://www.irs.gov/pub/irs-pdf/f720.pdf> and <http://www.irs.gov/pub/irs-pdf/i720.pdf>.

Background on Final Rule

The U.S. Department of the Treasury issued the final rule on the Fee on December 6, 2012. Notable modifications and/or clarifications under the final rule are summarized below.

Plans/Programs Subject to the Fee

The final rule clarifies that health coverage (self-insured or insured) plans are subject to the Fee, including retiree-only health plans and COBRA or similar continuation coverage under federal or state laws (unless otherwise excluded). However, employee assistance programs (EAPs), disease management programs, or wellness programs are not subject to the Fee if the program does not provide significant medical care or treatment benefits.

Guidance Regarding Counting of Lives

The final rule clarifies the following with regard to counting covered lives. In general, there are no provisions that allow the Fee to be allocated between plans or otherwise aggregated when an individual is covered by more than

1. For more information on these methods, see our June 6, 2012 LawFlash, “Internal Revenue Service Issues Guidance on New Research Fee,” available at http://www.morganlewis.com/pubs/EB_LF_IRSGuidanceNewResearchFee_06june12. The slight revisions to the snapshot count method are discussed below.

one health plan. For example, if an individual is covered by a fully insured major medical plan and a self-insured prescription drug plan, both plans will have to pay the Fee for the same covered individual. However, a group health plan that provides health coverage through insured and self-insured options may disregard the lives that are covered solely under the fully insured options when determining the number of covered lives under the self-insured plan. The expectation is that the insurer will pay the Fee for those covered solely under the fully insured option.

In addition, if the same plan sponsor (employer) provides multiple types of self-insured coverage (e.g., self-insured major medical and self-insured prescription drug) in the same plan year, these self-insured benefits may be treated as one self-insured plan. Therefore, the covered lives that participate in these benefits would only be counted once. Similarly, if the same plan sponsor (employer) sponsors a health reimbursement arrangement (HRA) and a self-insured health plan with the same plan year, those benefits may be treated as a single plan. Therefore, each individual who participates in both of those benefits would be counted as one covered life for the calculation of the Fee. However, a plan sponsor may not treat the HRA and a fully insured plan as a single plan for purposes of the Fee.

The final rule adds some flexibility for plans using the “snapshot count method” for counting lives. As noted in our previous LawFlash, under this method, the plan sponsor may sum the totals of covered lives on any one date in each quarter of the plan year. The method has been slightly revised, and, now, the date used for the second, third, and fourth quarters may be within three days of the corresponding date used in the first quarter.

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