Calculating the ACA PCORI & Reinsurance Fees

April 24, 2014

Assurex GLOBAL

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- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “questions” box located on your webinar control panel.

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- Engle-Hambright & Davies
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- The Rowley Agency
- Senn Dunn Insurance
- Smith Brothers Insurance
- Starkweather & Shepley Insurance Brokerage
- Woodruff-Sawyer & Co.
- John L. Wortham & Son

Background

- Patient-Centered Outcomes Research (PCORI or PCOR) Fees
  - ACA created a new nonprofit corporation, the Patient-Centered Outcomes Research Institute to support clinical effectiveness research
  - Funded in part by fees paid by health insurers and sponsors of self-funded health plans
- Required Contributions Toward Reinsurance Payments
  - ACA establishes a temporary reinsurance program for individual health insurance market from 2014 through 2016
  - Shifts the risk of covering high expenses from the primary insurer to a reinsurer
  - Health insurers and group health plans are required to contribute

PCORI Fee

- Policies and Plans Subject to Fees
  - Fully Insured Health Plans
    - A health insurance policy covering individuals residing in the U.S.
    - Fees are payable by the insurer not the employer/plan sponsor
  - Self-Funded Plans
    - Plan sponsor liable for fee for self-funded health plans
    - If the same plan sponsor maintains more than one self-funded plan (such as a self-funded medical plan with an HRA), the arrangement can be treated as a single self-funded health plan for purposes of calculating the fee
  - Combined fully-insured and self-funded plan
    - If employer sponsors fully insured medical plan and a HRA, the fee is due on the HRA (more later)

PCORI Fee

- PCORI Effective Date
  - Fees apply for 7 plan years - plan years ending after October 1, 2012 and before October 1, 2019
  - Examples:
    - For calendar-year plans, the fees would apply for calendar plan years 2012 through 2018
    - For a plan year of July 1 – June 30, the fee would apply from July 1, 2012 – June 30, 2013 plan year until July 1, 2018 – June 31, 2019 plan years

PCORI Fee

- Other Plan Issues
  - The requirement to pay the PCORI fee applies regardless of grandfathered plan status
  - Includes coverage provided to active employees, former employees, or qualifying beneficiaries under COBRA continuation coverage or similar continuation coverage under other federal or state law
  - Retiree-Only Plans Are Subject
- IRS Chart on plans subject to PCORI Fee
  - http://www.irs.gov/uac/Application-of-the-Patient-Centered-Outcomes-Research-Trust-Fund-Fee-to-Common-Types-of-Health-Coverage-or-Arrangements

PCORI Fee

- Other Plan Issues (Cont.)
  - Excepted Benefits Are Not Subject
  - Employee Assistance, Disease-Management, and Wellness Programs probably are exempt
    - The fees do not apply to an EAP, disease-management program, or wellness program if it does not provide "significant" benefits in the nature of medical care or treatment
  - Stop-Loss and Reinsurance Polices Are Not Subject

PCORI Fee

- Amount of Fees
  - The annual fee for plan years ending after Sept. 30, 2013 is $2.00 times the average number of covered lives under the plan
    - The fee was $1.00 in the case of policy or plan years ending before October 1, 2013
  - For later years, the annual fee increases based on the % increase in the projected per capita amount of National Health Expenditures. IRS will announce the amount each year
  - The fee is based on the average number of lives covered under the plan or policy; this means not just employees covered under the policy or plan, but also dependents and former employees still receiving coverage

PCORI Fee

- Determining Fees
  - For Insurers
    - Insurers have a choice of using any of four alternative methods to determine the average number of lives covered
  - Sponsors of Self-Funded Plans
    - Plan sponsors with self-funded plans have a choice of using any of three alternative methods (more details later)
    - Plan sponsors may only apply a single method in determining the number of lives covered for a plan year, but can change methods from one plan year to the next

PCORI Fee

- Special Rules for HRAs (or Non-Excepted Health FSA)
  - If offered with a self-funded group health plan, the HRA/FSA is ignored and only one fee per covered life is due
    - Assuming both plans have the same plan year
  - If offered with a fully insured plan, separate fee is due for HRA/FSA
    - Each participant can be treated as a single life, regardless of how many other individuals (e.g., spouse, dependents, and other beneficiaries) are actually covered
    - This is in addition to the fees that will be paid for the insured plan by the insurer

PCORI Fee

- Payment and Reporting of PCORI Fees
  - Fees are to be reported and paid once a year, due no later than July 31 of the year following the last day of the plan year
    - Fee for plan year 1/1 - 12/31/2012 was to be paid by July 31, 2013
    - Fee for plan year 7/1/2012 – 6/30/2013 paid by July 31, 2014
    - Fee for plan year 1/1 - 12/31/2013 paid by July 31, 2014
  - Reported on IRS Form 720 (Quarterly Federal Excise Tax Return)

PCORI Fee

40	Gas guzzler tax. Attach Form 6197. Check if one-time filing . . . . ☐				40
97	Vaccines (see instructions)				97
		Sales price	2.3% of sales price		
136	Taxable medical devices				136
1	**Total.** Add all amounts in Part I. Complete Schedule A unless one-time filing ▶			$	

Part II

IRS No.	**Patient-Centered Outcomes Research Fee** (see instructions)	(a) Avg. number of lives covered	(b) Rate for avg. covered life	Col. (a) x Col. (b)	Tax	IRS No.
133	Specified health insurance policies		$1.00			
	Applicable self-insured health plans		$1.00			133

		Rate		
41	Sport fishing equipment (other than fishing rods and fishing poles)	10% of sales price		41
110	Fishing rods and fishing poles (limits apply, see instructions)	10% of sales price		110
42	Electric outboard motors	3% of sales price		42
114	Fishing tackle boxes	3% of sales price		114
44	Bows, quivers, broadheads, and points	11% of sales price		44
106	Arrow shafts	$ .48 per shaft		106
140	Indoor tanning services	10% of amount paid		140

		Number of gallons	Rate	Tax	
64	Inland waterways fuel use tax		$ .20		64
125	LUST tax on inland waterways fuel use (see instructions)		.001		125
51	Alcohol and cellulosic biofuel sold as but not used as fuel				51

PCORI Fee

- Plan Sponsor Cost or Plan Cost
  - The DOL has indicated that these fees are not plan expenses under ERISA since they are imposed on the plan sponsor
    - This means participant contributions should not be used to pay the fee
- Penalties for Failure to Report and Pay PCORI Fees
  - Neither the statute or regulations include an express penalty for failure to report or pay the PCORI fee
  - Since this fee is considered an excise tax that is reportable on IRS Form 720, any related penalty for failure to file a return or pay a tax would apply

Reinsurance Program Contributions

- Required Contributions Toward Reinsurance Payments
  - ACA establishes a temporary reinsurance program for individual health insurance market from 2014 through 2016
    - Shifts the risk of covering high expenses from the primary insurer to a reinsurer
  - Health insurers and group health plans are required to contribute

Reinsurance Program Contributions

- Who is Responsible for Making Reinsurance Contributions?
  - Contributing Entity
    - A "contributing entity" is the insurer for fully insured plans or TPA on behalf of a self-funded group plan
    - For self-funded plans, the plan is liable, but a TPA or contractor may be used to transfer reinsurance payments on behalf of a self-funded plan

Reinsurance Program Contributions

- Who is Responsible for Making Reinsurance Contributions?
  - Limited Exemption for 2015 and 2016
    - Self-administered self-funded group health plans are excluded from paying reinsurance contributions if they do not use a TPA for the "core administrative functions" of claims processing or adjudication, or plan enrollment
    - Exclusion still applies if plans use TPAs for:
      - Obtaining provider network and related claim repricing
      - For a de minimis percentage (up to 5%) of a plan's core administrative functions
      - Or for core administrative functions relating only to pharmacy or excepted benefits

Reinsurance Program Contributions

- Type of Coverage Subject to Reinsurance Contribution
  - Major Medical Coverage
    - HHS excludes coverage that does not provide "minimum value" as defined by the ACA
      - Generally a health plan with an actuarial value of at least 60%
  - Retiree-only coverage is generally subject to the fee
    - Where an individual has both Medicare and employer coverage, the Medicare Secondary Payer (MSP) rules determine whether the employer coverage is subject to the fee
      - If Medicare is the primary payer, the employer coverage would not be subject to the reinsurance contribution
  - COBRA coverage is subject to the fee

Reinsurance Program Contributions

- Coverage Not Subject to the Fee
  - An HRA within the meaning of IRS Notice 2002-45 (or subsequent applicable guidance) that is integrated with a self-funded plan or insured coverage
  - A HSA or health FSA
  - An EAP, disease-management program, or wellness program that does not provide major medical coverage
  - A stop-loss or indemnity reinsurance policy
  - A self-funded group health plan or insurance coverage that consists solely of benefits for prescription drugs

Reinsurance Program Contributions

- Contribution Amount
  - The amount of the reinsurance contribution is based on the statutory requirement to collect $12 billion for 2014 ($10 billion for the reinsurance program and $2 billion for the U.S. Treasury)
    - The combined amount will decrease to $8 billion for 2015 and $5 billion for 2016
  - The annual per capita contribution rate for 2014 is $63
  - HHS announced an annual contribution amount of $44 per covered life for 2015
- Plan Sponsor or Plan cost?
  - The DOL has confirmed that these contributions are permissible plan expenses under ERISA, so employee contributions can be used as part of the payment of the fee

Reinsurance Program Contributions

- Calculation and Collection of Reinsurance Contributions
  - Reinsurance contributions must be made for all "reinsurance contribution enrollees“ including all individuals covered by a plan (this would include active employees and dependents)
  - The reinsurance contribution is calculated by multiplying the average number of covered lives during the applicable “benefit year” by the contribution rate for the applicable benefit year
    - "Benefit year" means a calendar year for which a health plan provides coverage for health benefits, regardless of the plan year
  - Self-funded plans may use the same three methods for counting covered lives as with the PCORI fees (more later)
    - Actual count method, snapshot method, or Form 5500 method
    - A plan would not have to use the same counting method for the reinsurance calculation that is used for purposes of the PCORI fees

Reinsurance Program Contributions

- Double coverage
  - No reinsurance contributions are required in the case of employer-provided group health coverage where an individual is also enrolled in individual market health insurance coverage (for which reinsurance contributions are required), or when coverage is secondary to group health coverage (for which reinsurance contributions must be made for the same covered lives)
    - This provision would apply in a situation in which two spouses are each covered as dependents by the respective group health plans offered by their two independent employers

Reinsurance Program Contributions

- Timing and Collection of Reinsurance Contributions
  - Each entity must make the reinsurance contributions annually
  - General Process
    - Enrollment data must be provided to HHS by November 15
    - Generally calculated based on January through September data (unless using the 5500 method) even for non-calendar-year plans
    - HHS will notify the contributing entity in December of the amount of the contribution for the year
    - Payment is due 30 days after notification

Reinsurance Program Contributions

- Payment process
  - Contributions will be paid in two installments
    - The first installment will be invoiced by December 15
    - The second installment in the fourth quarter of the following calendar year
  - Example
    - For 2014, the first reinsurance contribution payment of $52.50 per covered life would be invoiced in December 2014 and payable in January 2015
    - Another reinsurance contribution payment of $10.50 per covered life would be invoiced in the fourth quarter of 2015 and payable late in the fourth quarter of 2015

Counting Methods

- Methods to Calculate the Covered Lives
  - Actual Count Method
    - Sum of the lives covered for each day of the applicable period and dividing that sum by the number of days in the period
      - Applicable period
        - Plan year for PCORI fee
        - Jan – Sept. for Reinsurance Contribution

Counting Methods

- Methods to Calculate the Covered Lives
  - Snapshot method
    - Average number of lives covered under the plan for the applicable period by adding the totals of lives covered on a date during each quarter, or an equal number of dates for each quarter, and dividing the total by the number of dates which a count was made
    - Applicable period
      - Plan year for PCORI fee
      - First three quarters for Reinsurance Contribution
  - Not required to use a specific date for each quarter, but the date must be consistent in each quarter

Counting Methods

- Methods to Calculate the Covered Lives
  - Snapshot method
  - Counting family members - there are two methods within the snapshot method to count family members
    - The "snapshot count method" requires the plan to count the actual number of lives covered on the designated date
    - The "snapshot factor method" allows the plan to count the number of participants with self-only coverage, plus the number of participates with coverage other than self-only coverage multiplied by 2.35

Counting Methods

- Methods to Calculate the Covered Lives
  - Form 5500 Method
    - Determine the average number of lives covered under the plan for the plan year based on a formula that includes the number of participants actually reported on the Form 5500
    - A plan sponsor may only use this method if the Form 5500 is filed no later than the due date for the fee imposed for that plan year
  - The total number of lives is determined by simply adding the total "participant" counts at the beginning and end of the year
    - A plan that only offers single coverage adds the total participant counts at the beginning and end of the year and divides by 2
  - A 5500 participant is different than the other methods
    - Only count the principal insured – not spouses or dependents

Counting Methods

- Methods to Calculate Covered Lives
  - Using different methods can generate significantly different liability depending on facts and circumstances
  - Examples 1: Growing Company with 2.6 average contract size

Subscribers			
Jan	300	Jun	600
Feb	400	Jul	600
Mar	400	Aug	600
Apr	500	Sep	600
May	500	**Average**	**500**

		Actual Count Method	5500 Method
Number of Subscribers		500	
Average Contract Size		2.6	
Total number of partipants		1300	900
	Total Fee Due	$81,900.00	$56,700.00
	Savings		**$25,200.00**

  - Example 2: Stable Employment with a 1.7 average contract size

Subscribers			
Jan	500	Jun	500
Feb	500	Jul	500
Mar	500	Aug	500
Apr	500	Sep	500
May	500	**Average**	**500**

		Actual Count Method	5500 Method
Number of Subscribers		500	
Average Contract Size		1.7	
Total number of partipants		850	1000
	Total Fee Due	$53,550.00	$63,000.00
	Savings	**$9,450.00**	

Record Keeping

- Recordkeeping Requirements
  - PCORI Fee
    - No specific requirement regarding record retention related to the calculation of the PCORI fee
      - However, fee is considered an excise tax. Instructions to Form 720 advise taxpayers to keep records and supporting documentation for at least four years from the latest of the date the tax became due or the date the tax was paid
    - Reinsurance Contribution
      - HHS requires that a contributing entity maintain documents and records sufficient to substantiate the enrollment count submitted for at least ten years

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Thank you.

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