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# COMPLIANCE ALERT

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EMPLOYEE BENEFITS | JUNE 8, 2020

## Reminder: PCORI Fees Due By July 31, 2020

Employers that sponsor self-insured group health plans, including health reimbursement arrangements (HRAs) should keep in mind the upcoming July 31, 2020 deadline for paying fees that fund the Patient-Centered Outcomes Research Institute (PCORI). As background, the PCORI was established as part of the Affordable Care Act (ACA) to conduct research to evaluate the effectiveness of medical treatments, procedures and strategies that treat, manage, diagnose or prevent illness or injury. Under the ACA, most employer sponsors and insurers were required to pay PCORI fees until 2019, as it only applied to plan years ending on or before September 30, 2019. However, the PCORI fee was extended to plan years ending on or before September 30, 2029 as part of the Further Consolidated Appropriations Act, 2020.

The amount of PCORI fees due by employer sponsors and insurers is based upon the number of covered lives under each “applicable self-insured health plan” and “specified health insurance policy” (as defined by regulations) and the plan or policy year end date. This year, employers will pay the fee for plan years ending in 2019.

For plan years that ended between January 1, 2019 and September 30, 2019, the fee is \$2.45 per covered life and is due by July 31, 2020.

Since the extension of the PCORI fee deadline in December, issuers and sponsors of self-funded plans have been anxiously

awaiting information from the IRS concerning the applicable PCORI fee for plans with plan years ending between October 1, 2019 and before October 1, 2020. On June 8, 2020, the IRS issued [Notice 2020-44](#), which sets the applicable PCORI fee for these plans at **\$2.54** per covered life. As of June 8, the IRS has not released the second quarter Form 720. The second quarter Form 720 **must** be used to pay the PCORI fee.

In addition, Notice 2020-44 provides transition relief to issuers and self-funded plan sponsors for purposes of calculating the PCORI fee for plan years ending on or after October 1, 2019 and before October 1, 2020. The rationale provided by the IRS is because issuers or plan sponsors may not have anticipated the need to identify the number of covered lives during this time period because they believed the PCORI fee expired on September 30, 2019.

Accordingly, the IRS provides that plan sponsors of impacted plans may continue to use the actual count, snapshot, or Form 5500 method to calculate the average number of lives and determine the applicable PCORI fee. These methods are discussed more fully later in this alert. Additionally, the IRS also provided that plan sponsors of impacted plans may opt to use a “reasonable method” to calculate the average number of covered lives for the plan year ending on or after October 1, 2019 (but before October 1, 2020) as long as the method is applied consistently for the duration of the plan year.

Therefore, for example, a plan year that ran from July 1, 2018 through June 30, 2019 will pay a fee of \$2.45 per covered life and use the snapshot, Form 5500, or actual count method to determine the average number of covered lives. On the other hand, calendar year 2019 plans will pay a fee of \$2.54 per covered life and use the snapshot, actual count, Form 5000, or another reasonable method to calculate the average number of covered lives for the plan year.

The insurance carrier is responsible for paying the PCORI fee on behalf of a fully insured plan. The employer is responsible for paying the fee on behalf of a self-insured plan, including an HRA. In general, health FSAs are not subject to the PCORI fee.

Employers that sponsor self-insured group health plans must report and pay PCORI fees using [IRS Form 720, Quarterly Federal Excise Tax Return](#).

NOTE: Employers must wait until the second quarter Form 720 is released by the IRS to pay the fee. If this is an employer's last PCORI payment and they do not expect to owe excise taxes that are reportable on Form 720 in future quarters (e.g., because the plan is terminating), they may check the "final return" box above Part I of Form 720.

Also note that because the PCORI fee is assessed on the plan sponsor of a self-insured plan, it generally should not be included in the premium equivalent rate that is developed for self-insured plans if the plan includes employee contributions. However, an employer's payment of PCORI fees is tax deductible as an ordinary and necessary business expense.

### Historical Information for Prior Years

- For plan years that ended between October 1, 2018 and December 31, 2018, the fee is \$2.45 per covered life and was due by July 31, 2019.
- For plan years that ended between January 1, 2018 and September 30, 2018, the fee is \$2.39 per covered life and was due by July 31, 2019.
- For plan years that ended between October 1, 2017 and December 31, 2017, the fee is \$2.39 per covered life and was due by July 31, 2018.
- For plan years that ended between January 1, 2017 and September 30, 2017, the fee is \$2.26 per covered life and was due by July 31, 2018.
- For plan years that ended between October 1, 2016 and December 31, 2016, the fee is \$2.26 per covered life and was due by July 31, 2017.
- For plan years that ended between January 1, 2016 and September 30, 2016, the fee is \$2.17 per covered life and was due by July 31, 2017.
- For plan years that ended between October 1, 2015 and December 31, 2015, the fee was \$2.17 per covered life and was due by August 1, 2016.
- For plan years that ended between January 1, 2015 and September 30, 2015, the fee was \$2.08 per covered life and was due by August 1, 2016.
- For plan years that ended between October 1, 2014 and December 31, 2014, the fee was \$2.08 per covered life and was due by July 31, 2015.
- For plan years that ended between January 1, 2014 and September 30, 2014, the fee was \$2 per covered life and was due by July 31, 2015.
- For plan years that ended between October 1, 2013 and December 31, 2013, the fee was \$2 per covered life and was due by July 31, 2014.
- For plan years that ended between January 1, 2013 and September 30, 2013, the fee was \$1 per covered life and was due by July 31, 2014.
- For plan years that ended between October 1, 2012 and December 31, 2012, the fee was \$1 per covered life and was due by July 31, 2013.

### Explanation of Counting Methods for Self-Insured Plans

As discussed above, plan sponsors of plans years ending before October 1, 2019 may choose from the below three methods below when determining the average number of lives covered

by their plans. Plan sponsors with plan years ending on or after October 1, 2019 and before October 1, 2020 can use any of the three methods below or another reasonable method. The IRS did not specify a reasonable method that could be used, though employers should use good faith when determining the count.

**Actual Count method.** Plan sponsors may calculate the sum of the lives covered for each day in the plan year and then divide that sum by the number of days in the year.

**Snapshot method.** Plan sponsors may calculate the sum of the lives covered on one date in each quarter of the year (or an equal number of dates in each quarter) and then divide that number by the number of days on which a count was made. The number of lives covered on any one day may be determined by counting the actual number of lives covered on that day or by treating those with self-only coverage as one life and those with coverage other than self-only as 2.35 lives (the "Snapshot Factor method").

**Form 5500 method.** Sponsors of plans offering self-only coverage may add the number of employees covered at the beginning of the plan year to the number of employees covered at the end of the plan year, in each case as reported on Form 5500, and divide by 2. For plans that offer more than self-only coverage, sponsors may simply add the number of employees covered at the beginning of the plan year to the number of employees covered at the end of the plan year, as reported on Form 5500.

**Special rules for HRAs.** The plan sponsor of an HRA may treat each participant's HRA as covering a single covered life for counting purposes, and therefore, the plan sponsor is not required to count any spouse, dependent or other beneficiary of the participant. If the plan sponsor maintains another self-insured health plan with the same plan year, participants in the HRA who also participate in the other self-insured health plan only need to be counted once for purposes of determining the fees applicable to the self-insured plans.

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