

COMPLIANCE ALERT



EMPLOYEE BENEFITS | November 30, 2022

IRS Releases PCORI Fee For Plan Years Ending Before October 1, 2023

The IRS has released Notice 2022-59, which sets the applicable PCORI fee for plan years ending between October 1, 2022 and September 30, 2023 at **\$3.00** per covered life.

As a reminder, 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 or 2020, 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. The fee must be paid on or before July 31st each year. The fees due by July 31, 2023 are for plan years ending in 2022 and are as follows:

- For plan years ending between January 1, 2022 and September 30, 2022, the fee is \$2.79 per covered life.
- For plan years ending between October 1, 2022 and December 31, 2022, the fee is \$3.00 per covered life.

Insurance carriers are responsible for calculating and paying the PCORI fee for fully insured plans. 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 the **second quarter** IRS Form 720, Quarterly Federal Excise Tax Return. The second quarter form is generally not released by the IRS until the second quarter of the applicable filing year (usually in or around May of the applicable filing year). Therefore, the Form 720 used for the 2023 filing deadline will not likely be available until in or around May 2023, and employers who sponsor self-insured group health plans subject to the PCORI fee must wait to file until the correct Form 720 is available.

The average number of covered lives for the plan year is generally calculated using the snapshot, snapshot factor, actual count, or Form 5500 method. These counting methods will be described in more detail in a future alert as we approach the 2023 filing deadline.

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.

This alert was prepared for Woodruff Sawyer by Marathas Barrow Weatherhead Lent LLP, a national law firm with recognized experts on ERISA-governed and non-ERISA-governed retirement and welfare plans, executive compensation, and employment law. Contact Stacy Barrow or Nicole Quinn-Gato at sbarrow@marbarlaw.com or nquinn gato@marbarlaw.com.

The information provided in this alert is not, is not intended to be, and shall not be construed to be, either the provision of legal advice or an offer to provide legal services, nor does it necessarily reflect the opinions of the agency, our lawyers, or our clients. This is not legal advice. No client-lawyer relationship between you and our lawyers is or may be created by your use of this information. Rather, the content is intended as a general overview of the subject matter covered. This agency and Marathas Barrow Weatherhead Lent LLP are not obligated to provide updates on the information presented herein. Those reading this alert are encouraged to seek direct counsel on legal questions.

© 2022 Marathas Barrow Weatherhead Lent LLP. All Rights Reserved.