

PCORI FEE FOR HRAs AND CERTAIN FSAs

Payable Starting July 31, 2013

Health Care Reform imposes a new fee on employers who sponsor Health Reimbursement Plans (HRAs) and certain FSAs. The fee, called the PCORI Fee (alternately the Comparative Effectiveness Fee or CER Fee), is payable in the form of an excise tax due each year on July 31.

What is the purpose of the fee: As part of the *Patient Protection and Affordable Care Act* (PPACA or ACA), the U.S. Congress authorized the Patient Centered Outcomes Research Institute (PCORI) to conduct research that will provide evidence-based information regarding the prevention, diagnosis, treatment, monitoring and management of diseases and other health conditions. This information is intended to help clinicians, policymakers, patients and their caregivers make informed health care decisions. See www.pcori.org.

When do the fees start: The PCORI fees apply to plan years ending on or after October 1, 2012 and before October 1, 2019; a period of seven (7) full plan years. For calendar year plans, the fees apply for the years 2012 through 2018.

Which plans are affected: Employers who sponsor self-insured group health plans (including HRAs and non-excepted FSAs) are required to pay the fees. Following are additional details regarding the PCORI Fee and the employer's responsibilities.

FSAs: Because most FSA arrangements are structured as excepted benefits, it would be unusual for the fee to apply to an FSA plan. However, if an employer contributes more than \$500 to the medical FSA or if the FSA is offered as a replacement for a group health plan, the FSA would be subject to the fees.

HRAs: Certain HRAs are subject to the PCORI fee while others are exempt:

HRAs that ARE subject to the PCORI Fee include:

- Stand-Alone HRA** where employer has no other group health plan coverage
- Retiree-only HRA**
- Integrated HRA** operated in conjunction with a **fully-insured** group health plan to reimburse a portion of the health plan's out-of-pocket expenses **will file and pay the PCORI fee.** The

insurance carrier will also pay a separate PCORI fee for the fully insured policy.

HRAs that are NOT subject to the PCORI Fee include:

- ❑ **Integrated HRAs** operated in conjunction with an employer's **self-insured or self-funded** group health plan. Under a special rule, the employer who sponsors multiple self-funded arrangements will not pay *multiple* fees. They will file and pay a single fee for the self-funded group health plan using a "per member" counting method.
- ❑ **Limited Benefit HRAs** that pay or reimburse only dental and vision expenses so long as the HRA does not interact with the primary group health plan. (i.e. a separate dental or vision HRA that pays no medical expenses.)
- ❑ **Expatriate HRA Plans.** HRAs with benefits restricted to expenses incurred by employees who work and reside outside the USA.
- ❑ **EAPs, Disease Management and Wellness Programs** may be exempt unless they provide significant medical care or treatment.

Note: There is no exemption for HRAs sponsored by governmental entities including Indian tribal governments that do not otherwise meet the definition of "exempt governmental program."

Determining the Number of Covered Lives for a FSA or a HRA:

While group health plans are required to count each plan member (i.e. employee + spouse + each dependent), the counting methods allowed for non-excepted FSAs and HRAs assume one covered life for each employee enrolled in the plan. To be clear, for non-excepted FSAs and HRAs, the plan sponsor is required to report a count using only the number of employees enrolled in the plan and is not required to count the coverage for a spouse or dependent.

The employer may use any of three alternative methods described below and is allowed to change the counting method used each year:

Actual Count Method: Count and total the number of employees covered for each day of the plan year and divide the total by the number of days in the plan year.

Snapshot Method: Add the total number of lives covered on a date during the first, second or third month in each quarter or an equal number of dates for each quarter and divide the total by the number

of dates on which a count was made. A specific date for each month or quarter is not required but an employer should use similar dates in each period.

Form 5500 Method: Add the count on the first and last days of the plan year and divide by 2. Guidance provided has indicated that the Form 5500 count method may be used so long as the Plan Sponsor's Form 5500 is filed no later than the due date for the fee imposed for the plan year.

NOTE: *Elkin & Associates, LLC will provide counts using the Form 5500 method. Employers may perform a self-count using one of the other methods indicated above if they believe the Form 5500 method is not appropriate for their plan.*

Who files and pays PCORI Fees for FSAs and HRAs that qualify: The plan sponsor (employer) is required to report and pay the fee. Third Party Administrators are not allowed to file or pay the PCORI Fees for qualifying FSAs or HRAs.

Timing and Amounts Due: The fees are calculated, filed and paid on an annual basis and are due on July 31st each year. The fee is \$2.00 times the number of covered lives (\$1.00 in the case of a plan year ending before October 1, 2013). For later years the fee will increase based on the percentage increase in the projected per capita amount of National Health Expenditures as published by the Treasury. For example:

Plan Year End Date	Amount Due Per Applicable Count	Date Due
10/01/12 to 12/31/12	\$1.00	July 31, 2013
01/01/13 to 09/30/13	\$1.00	July 31, 2014
10/01/13 to 12/31/13	\$2.00	July 31, 2014
01/01/14 to 09/30/14	\$2.00	July 31, 2015
10/01/14 to 12/31/14	\$2.00 + Indexed Increase	July 31, 2015
01/01/15 to 12/31/15	Indexed amount*	July 31, 2016
01/01/16 to 12/31/16	Indexed amount*	July 31, 2017
01/01/17 to 12/31/17	Indexed amount*	July 31, 2018
01/01/18 to 12/31/18	Indexed amount*	July 31, 2019
01/01/19 to 09/30/19	Indexed amount*	July 31, 2020
* Indexed Amounts will increase effective 10/1 each year		

How is the report filed and how is the fee paid: The fees are assessed, collected and enforced in the same manner as taxes under other Federal Code provisions.

The employer will file a miscellaneous tax form, specifically IRS Form 720 "Quarterly Federal Excise Tax Return" with the IRS and will deposit the payment with their bank in the same manner in which they pay other federal taxes. See www.irs.gov for specific instructions related to Form 720.

NOTE: The fee is payable once per year on July 31 even though a quarterly tax form is being used to report the liability. As of 5/23/13, the IRS has yet to update Form 720 to include a section for reporting the PCORI liability. E&A will issue a client alert when the updated Form 720 is available.

Additional information regarding the PCORI Fee is available at:

http://www.irs.gov/irb/2012-52_IRB/ar11.html#d0e1745

The foregoing is an interpretation of regulations governing PCORI fees and is not intended as legal, tax or other professional advice.