PCORI Q & As

Below are some frequently asked questions on when and whether employers that offer a health reimbursement account (HRA) or health flexible spending account (health FSA) to employees must pay fees to the Patient-Centered Outcomes Research Institute (PCORI fees) as required under the Affordable Care Act.

Q.1: What are PCORI fees?

A.1: PCORI fees are annual fees that group health plans (including certain HRAs) must pay to fund research on "evidence based medicine" that will be conducted by the Patient Centered Outcomes Research Institute (PCORI). PCORI will conduct scientific studies of medical outcomes in order to determine which procedures and treatments are most clinically effective. The focus on medical outcome is intended to start to shift away from the current, "retail" model of pricing and paying for medical services on a per-treatment or per-diagnostic test basis without regard to ultimate health outcome.

Q.2: How will the fees used?

A.2: Fees will be collected, invested and disbursed to PCORI by the Patient-Centered Outcomes Research Trust Fund (PCOR Trust Fund). Both PCORI and the Trust Fund were created by the Affordable Care Act.

Q.3: Is the PCORI Fee program permanent?

A.3: No. PCORI fees are payable for plan years ending on or after October 1, 2012 and before October 1, 2019 (i.e., seven full plan or policy years). For calendar year plans or policies, they would apply for the 2012 through 2018 calendar years.

Q.4: What plans must pay these fees?

A.4: Group health plans, whether insured or self-funded, must pay the fees. HRAs are considered group health plan and, subject to certain exceptions, must pay PCORI fees.

Q.5: Who pays the fees?

A.5: Insurance carriers will calculate and pay the fees with respect to group health insurance policies. For self-funded group health plans, including certain HRAs as described below, the employer must calculate and pay the fees.

Q.6: When must fees be paid?

A.6: PCORI fees are paid and reported annually using a single IRS Form 720 (Quarterly Federal Excise Tax Return) that must be filed by July 31 of the year following the last day of the plan year that is being reported. Fees for a calendar year plan or policy ending December 31, 2012 are due to be reported and filed no later than Wednesday, July 31, 2013.

Q.7: How are PCORI fees calculated?

A.7: For plan/policy years ending on or after October 1, 2012, and before October 1, 2013, the applicable fee is $1.00 per average number of covered lives under the plan/policy. That amount increases to $2.00 for plan/policy years ending on or after October 1, 2013, and before October 1, 2014. The amount is indexed for inflation for plan years beginning on/after October 1, 2014.

Q.8: How do you count "covered lives"?

A.8: Except as otherwise described, below, employers that sponsor HRAs subject to payment of the fees count each participant in the HRA as one covered life (one life per participant rule). Therefore, except as described below, spouses and dependents do not need to be counted.

Q.9: What type of HRA plans must pay PCORI fees?

A.9: Certain "stand-alone" HRAs, and HRAs that are "integrated" with an insured major medical group health plan generally must pay PCORI fees. An HRA is "stand alone" when it is not linked to a major medical insurance policy or self-funded plan. An example is an HRA offered by an employer that does not provide group health coverage, but that allows employees to purchase their own individual policies and reimburses their premiums and other general out of pocket medical expenses under the HRA. An HRA is "integrated" with an insured major medical plan when the HRA is open only to employees who enroll in the major medical plan. For a stand-alone HRA the employer counts covered lives using the one life per participant rule. For HRAs teamed with an insured group health plan, the employer may choose from three different counting methods, each of which takes covered spouses and dependents into account.

Q.10: What type of HRA plans are exempt from paying PCORI fees?

A.10: When the employer/plan sponsor teams the HRA with a *self-funded* "major medical" group health plan, the two plans are treated as one plan for purposes of the PCORI fee. In that situation the employer only owes PCORI fees for lives covered under the major medical plan (generally including spouses and dependents) and no separate fee for the HRA participants is required. Also, no PCORI fee is required for an HRA that is stand-alone, but allows reimbursement only for "limited scope" dental and vision coverage, and/or certain supplemental coverages.

Q.11: When are health FSAs exempt from PCORI fees?

A.11: Health FSAs (used under a Section 125 cafeteria plan) are not subject to PCORI fees unless they include employer *non-matching* contributions in excess of $500 per year. (Employer matching

contributions on a "dollar for dollar" basis may exceed $500.) If the health FSA uses employer credits, credits may exceed $500 without triggering PCORI fee duties so long as the credits can be cashed out in full by the employee. Health FSAs that provide only limited scope dental, vision or supplemental reimbursements are also exempt from PCORI fee duties.

Q.12: Are HRAs subject to the ACA rule that group health plans cannot impose annual or lifetime dollar limits on "essential health benefits"?

A.12: HRAs are group health plans and by definition provide a limited annual budget (unused portions of which may be carried over year from year). As a result they would appear to automatically fail the Section 2711 of the Public Health Service Act (PHS Act, incorporated into the ACA), which prohibits group health plans or policies from imposing annual or lifetime dollar limits on coverage costs. Fortunately, the federal agencies that govern the ACA (the IRS, DOL and HHS) have provided certain exceptions from PHA Act Section 2711 applicable to HRAs.

Q.13: What exceptions from PHS Act Section 2711 apply to HRAs?

A.13: An HRA that is "integrated" with a major medical group health plan (insured or self-funded) that satisfies PHS Act Section 2711 (i.e., that imposes no annual or lifetime cap on medical expenses) is deemed to satisfy PHS Act Section 2711. For these purposes, an HRA is integrated with a no-dollar-limit major medical plan or insurance policy when the HRA is limited to employees who are eligible under the major medical plan or policy. Relief from PHS Act 2711 for an HRA also only applies to employees who actually enroll in the major medical plan. Retiree-only HRAs are also exempt from the rule.

Q.14: Is an HRA that reimburses employees for premiums for individual health insurance "integrated" for these purposes?

A.14: No, the agencies have informally stated in an online "FAQ" and will confirm in future guidance that an HRA will be subject to Section 2711 – and thus will violate that rule – if it directly reimburses employees for the costs of individual market coverage or is linked to an employer plan that provides coverage through individual policies.

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