

Compliance Alert

IRS Requests Comments on Health Reform Fee

Alert Date: 7/6/2011

Introduction

The IRS has published a request for comments in Notice 2011-25 regarding the implementation provisions included in the Patient Protection and Affordable Care Act (ACA) related to fees which will be imposed on health plans to help fund comparative clinical effectiveness research relating to patient-centered outcomes.

The ACA creates a nonprofit corporation, the Patient-Centered Outcomes Research Institute (Institute), to conduct and promote clinical effectiveness research. The Institute will be funded by a Patient-Centered Outcomes Research Trust Fund (Trust Fund).

The Trust Fund will be funded in part by fees to be paid by issuers of health insurance policies and sponsors of self-insured health plans. The IRS will publish regulations providing guidance on the requirements applicable to issuers and plan sponsors that pay those fees. The request for comments is an opportunity for employers, and the health insurance industry, to provide comments on how the fees should be determined and paid. While a request for comments does not define the rules, it includes information on the kind of issues that may be addressed in the subsequent regulations.

Background

The ACA imposes fees on “specified health insurance policies” and “applicable self-insured health plans” based on the average number of lives covered under the policy or plan. The fees are effective for plan years ending after September 30, 2012. Thus, for employer sponsored plans that begin on the first of the month, the first plan year subject to the fees will be plan years beginning November 1, 2011. The fee no longer applies for plan years ending after September 30, 2019.

The fee equals to \$1.00 (one dollar) per year, multiplied by the average number of lives covered under the plan for plan years ending before October 1, 2013, and \$2.00 (two dollars) per year for plan years ending after that date. Beginning in 2014 the fee will be adjusted based on a formula that takes into account the increase in national health care expenditures. Covered employees, spouses, and dependents will be included in the total number of covered lives.

The fee applies to “specified health insurance policy” including self-funded plans, which is defined as any accident or health insurance policy (including a policy under a group health plan) issued with respect to individuals residing in the United States. The fee does not apply to plans that are treated as excepted benefits under HIPAA (i.e. limited scope dental and vision plans).

For fully insured plans the fee will be paid by the issuer (the health insurance carrier). The fee for self-funded plans must be paid by the plan sponsor (generally the employer).

IRS Request for Comments

The IRS has asked for comments on a number of administrative issues related to the implementation of the fee including :

- The possible types of health reimbursement arrangements (HRAs) that would be excluded.
- How the administrative burden could be reduced by providing for reasonable methods to determine the average number of lives covered under an applicable self-insured plan. For example, should there be a safe harbor that would permit sponsors of applicable self-insured health plans to compute the average number of lives covered using a formula.
- Regulations could require plan sponsors to report and pay the fees annually as opposed to quarterly.

- Regulations might also require the reporting and payment to occur on the same calendar date regardless of the plan year.
- Should future guidance permit all employers treated as a single employer under § 414 to be treated as a single employer?
- In the case of the fee imposed on self-insured health plans, what guidance is needed concerning the ability of a third-party administrator to act on behalf of a plan sponsor?

Individuals and organizations wishing to submit comments must do so by 9/6/11. Comments may be submitted either;

- By mail to CC:PA:LPD:PR (Notice 2011-35), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 –or-
- Electronically to Notice.Comments@irs counsel.treas.gov. (include “Notice 2011-35” in the subject line).

Summary

Employers will need to plan to pay the fee for plan year beginning later in 2011. However, with the comment period ending in September, it is unlikely that regulations will be issued before the first plan year begins that will be subject to the new fee. It is also likely there will be some kind of transition period which will give plan sponsors additional time to implement the necessary systems to report and pay the required fees.

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