COMPLIANCE ALERT

# PCORI Fee Due July 31, 2023

July 5, 2023

## Quick Facts

- The Patient-Centered Outcomes Research Institute (PCORI) fee applies to most group health plans, but not to excepted benefits.
- Payment amounts differ based on the employer's plan year, and 2023 calendar year plans owe $3.00 per covered life.
- The fee is filed on the Internal Revenue Service (IRS) Form 720 and payment is made through the Electronic Federal Tax Payment System (EFTPS).
- There are several methods that employers can use to determine the applicable fee.

### Background

The Affordable Care Act (ACA) created a nonprofit corporation, the PCORI, to support clinical effectiveness research. It is funded in part by fees paid by health insurers and sponsors of self-funded health plans (PCORI fees), which are reported on and paid annually using IRS Form 720. The IRS provides general summary information regarding the PCORI fee on a **dedicated website**.

### Plans Subject to the Fee

The PCORI fee applies to most group health plans, but not to excepted benefits. The PCORI fee applies to health reimbursement arrangements (HRAs) including qualified small employer HRAs (QSEHRAs) and individual coverage HRAs (ICHRAs) because they are self-funded health plans. Retiree-only plans are also subject to the PCORI fee. The IRS published a chart that describes the different **types of plans subject to the fee**.

Health insurance carriers pay the fee directly for fully insured plans, but employers are responsible for reporting and paying the fee for any self-funded group health plans, including HRAs. Fully insured plan sponsors with a self-funded component, such as an HRA must pay the fee for the self-funded component.

The PCORI fee was set to expire in 2019; however, the Consolidated Appropriations Act of 2020 extended the PCORI fee another 10 years to 2029.

#### Fee Amount

Payment amounts due in 2023 will differ based on the employer's plan year. The fees due in July 2023 are as follows:

- $2.79 per covered life for plan years ending in January – September 2022
- $3.00 per covered life for plan years ending in October - December 2022

## Reporting the Fee

The fee is paid using IRS quarterly **excise tax Form 720**, Line 133, and must generally be paid no later than July 31st of the year following the last day of the plan year. The fee is reported in the 2nd quarter (e.g., for the quarter ending June 30). When July 31 falls on a weekend, the filing and payment are due the next business day. Payment is made on EFTPS. **You can access EFTPS here**.

Payment amounts are increased annually and differ based on the employer's plan year. Reference the **IRS chart** illustrating plan year-end dates with applicable fees and due dates.

## Calculating the Average Number of Covered Lives

Self-funded plans may generally use one of three methods to determine the average covered lives used for reporting and paying the PCORI fee. Plan sponsors must stick with one method for the entire plan year but are allowed to change methods from year to year. Participants with coverage under the Consolidated Budget Reconciliation Act (COBRA) and retirees should be counted, regardless of which method below is chosen.

### Actual Count Method

Calculate the lives covered for each day of the plan year and divide by the number of days in the plan year.

### Snapshot Method

Add the lives covered on a consistent date each month or quarter and divide the total by the number of dates on which a count was made (e.g., divide by 12 if the count is done each month, or by 4 if the count is done each quarter). Under the snapshot method there are two methods for counting family members:

- Count the actual lives covered on the designated date; or
- Count the participants with self-only coverage on the designated date, plus the participants with coverage other than self-only coverage on the designated date multiplied by 2.35.

### Form 5500 Method

Use the participant count reported on Form 5500 for the plan year. The number of average covered lives is determined by adding the participant counts at the beginning and the end of the plan year; however, if a plan offers only single coverage, the final result is divided by two. The Form 5500 method may be used only if the Form 5500 is filed no later than the due date for the fee imposed for that plan year.

## Special Counting Rules for Certain Plans

Two special rules may apply for counting covered lives when an employer offers multiple self-funded plans or offers an HRA integrated with a fully insured group medical plan.

### Multiple Self-Funded Plans

If a plan sponsor maintains more than one self-funded health plan within the same plan year, the arrangements can be treated as a single plan for purposes of the fee. In other words, each unique covered life is only counted once.

### Health Reimbursement Arrangements

An employer who sponsors an HRA integrated with a fully insured medical plan is required to pay the fee only with respect to each HRA participant/employee; the employer is not required to count dependents or beneficiaries.

## Guidance for Short Plan Years

For short plan years, there are no special rules for pro-rating the average covered lives or the fee. If the employer is using the actual count method, the total is divided by a lesser number of days due to the short plan year. If the snapshot method is used, the total is divided by the number of months or quarters of the short plan year.

A short plan year is a plan year that is fewer than 12 months. Short plan years often result when a new plan begins in the middle of the year or changes from a non-calendar year plan to a calendar year plan. The due date for the PCORI fee applicable to a short plan year is July 31 of the year following the last day of the short plan year. If the short plan year causes there to be two plan year ending dates within the same calendar year, the fee would be due for both at the same time (July 31).

Just like a regular plan year, an employer has several methods from which to calculate the PCORI (actual count, snapshot, or Form 5500) and any applicable method may be used to calculate the fee for a short plan year.

In a short plan year, the fee itself is not prorated, but the amount of time used to calculate the fee is based only on the time employees were covered by the short plan year. The IRS provides this example in its **FAQs**:

"*The PCORI fee for the short plan year of an applicable self-insured health plan is equal to the average number of lives covered during that plan year multiplied by the applicable dollar amount for that plan year. Thus, for example, the PCORI fee for an applicable self-insured health plan that has a short plan year that starts on April 1, 2019, and ends on December 31, 2019, is equal to the average number of lives covered for April through December 31, 2019, multiplied by $2.54 (the applicable dollar amount for plan years ending on or after October 1, 2019, but before October 1, 2020).*"

## Failure to Pay the Fee

The IRS has not provided formal guidance for entities that fail to pay the PCORI fee, but it is advisable to file a Form 720 for the applicable year (or Form 720X for an amendment) as soon as possible for any missed fees and to pay any associated fines or penalties. A separate Form 720 should be filed for each missed plan year rather than paying fees for multiple plan years on the same Form 720.

The PCORI rules do not contain a specific penalty for failure to report or pay the PCORI fee, but since this fee is considered an excise tax, any related penalty for failure to file a return or pay a tax would seem to apply. Code §6651 includes the penalties for failure to file a return or pay taxes.

- The penalty is 5% of the excise tax due for each month or part of a month the return is late, with a cap of 25% of the unpaid tax. The minimum penalty for failure to file within 60 days of the due date, including extensions, is the lesser of $100 or the amount of tax owed with the return.
- There is also a penalty for failing to pay the excise tax on time. It is equal to .5% of any tax not paid by the due date for each month or part of a month the tax remains unpaid, up to 25% of the unpaid tax.
- On top of the penalties, interest can be charged on unpaid excise taxes.

In some cases, penalties may be waived if the plan sponsor has reasonable cause and the failure to pay was not due to willful neglect.

## Summary

The PCORI fee will continue to be part of group health plan compliance for the foreseeable future. Plan sponsors with self-funded plans or self-funded components must be aware of the requirements and be prepared to file and pay the PCORI fee by the applicable due date.

## EPIC Employee Benefits Compliance Services

For further information on this or any other topic, please contact your EPIC benefits consulting team.