Parker Brown Macaulay & Sheerin

December 6, 2012

Here Come the Taxes on Your Group Health Plans Courtesy of the ACA

Part I

Patient Centered Outcomes Research Institute (PCORI) Trust Fund Fees

The IRS issued final regulations on December 5, 2012 that implement and provide guidance on the PCORI Trust Fund fees imposed by the ACA, which affect the health insurance carriers and plan sponsors that are directed to pay those fees.

This Part I will provide a brief overview of the fees associated with the Patient Centered Outcomes Research Institute (PCORI) Trust Fund.

BACKGROUND

The ACA established the Patient Centered Outcomes Research Institute (PCORI) as a private, nonprofit corporation to advance comparative clinical effectiveness research and to make available the findings of this research to assist patients, clinicians and health care policy makers in making informed health decisions. Comparative effectiveness research focuses on clinical effectiveness and health outcomes. It does NOT focus on cost effectiveness.

In addition, the ACA added a new section to the Internal Revenue Code to establish the PCORI Trust Fund as the funding source for the PCORI and additional new sections to impose fees on health insurers and self-insured health plan sponsors to finance the PCORI Trust Fund.

BASIC NUTS AND BOLTS

- The fee applies to policy years (in the case of fully insured GHPs) and plan years (in the case of self-insured GHPs) ending on or after October 1, 2012 and before October 1, 2019.

- The initial annual fee is $1 per average covered life for policy/plan years ending before October 1, 2013; increasing to $2 per average covered life for policy/plan years ending before October 1, 2014 and then to an amount indexed to national

100 Foxborough Blvd., Suite 160 • Foxborough, MA 02035 • voice 617 350 7701 • fax 617 350 7744
www.parkerbrown.com

Parker Brown Macaulay & Sheerin

health expenditures for policy/plan years beginning on or after October 1, 2014 until fees end in 2019.

- Covered lives include participants, spouses and dependents

- Fees are considered excise taxes that are reported and paid annually on IRS Form 720 Quarterly Federal Excise Tax Return. Employer/sponsors will not file a Form 720 unless they sponsor a self-insured plan, <u>including an HRA</u>.

- Fees are due by the July 31 of the year following the last day of the policy or plan year.

  - E.g., for a calendar year policy/plan ending December 31, 2012, the fee must be paid by July 31, 2013.

  - E.g., for a fiscal year policy/plan ending March 31, 2013, the fee must be paid by July 31, 2014.

- Insurers pay the fees on behalf of insured plans (although plan sponsors of insured plans will likely see this cost passed through to them by the insurer in the form of higher premiums).

  - <u>Health insurance policies subject to the fee</u> include any accident and health insurance policy (including a policy under a GHP) issued to individuals residing in the United States, including active employees, former employees, qualified beneficiaries under COBRA or other applicable federal or state law.

  - <u>Health insurance policies that are not subject to the fee</u> include any:
    - insurance policy if substantially all of its coverage is of excepted benefits (e.g., limited scope dental or vision insurance);
    - group policy issued to an employer where the facts and circumstances show that the group policy primarily covers employees who are working and residing outside of the United States (e.g., expatriate policies);
    - stop loss or indemnity reinsurance policy; or
    - insurance policy to the extent it provides an EAP, disease management program, or wellness program if the program does not provide significant benefits in the nature of medical care or treatment.

  Governmental programs such as Medicare and Medicaid are exempt.

- Employer/plan sponsors pay the fees on behalf of self-insured health plans

  - HRAs and certain FSAs (in the uncommon event that the FSA is not considered an excepted benefit) are self-funded plans subject to the PCORI fee.

  - However, self-insured health plans do not include any of the following:
    - A plan that provides benefits substantially all of which are excepted benefits (e.g., limited scope dental or vision);
    - An EAP, disease management program, or wellness program if the program does not provide significant benefits in the nature of medical care or treatment; or
    - A plan where the facts and circumstances show that the plan primarily covers employees who are working and residing outside the United States (e.g., an expatriate plan).

  - The final regulations do not permit or include rules for third-party reporting or payment of the PCORI fee. Employers of self-insured health plans must file their own Form 720.

- The regulation provides a number of options to calculate covered lives for purpose of reporting and paying the PCORI fee. Insurers' options are not set forth here. To determine the average number of lives covered under an applicable self-insured health plan during a plan year, a plan sponsor must use one of the following methods:

  - <u>The actual count method</u> -- totals of lives covered for each day of the plan year dived by the number of days in the plan year

  - <u>The snapshot method</u> – average of quarterly snap shot dates

  - <u>The Form 5500 method</u> – based on the number of participants, as of the first day and the last day of the plan year, reported on the Form 5500

  Further, a plan sponsor must use the same method of calculating the average number of lives covered under the plan consistently for the duration of the plan year. However, a plan sponsor may use a different method from one plan year to the next.

Parker Brown Macaulay & Sheerin

TAX ME TWICE -- THE TRICKY RULE FOR HRAs

- If a plan sponsor provides an HRA and another self-insured GHP that provides major medical coverage, the HRA and the major medical plan may be treated as one applicable self-insured health plan for purposes of calculating the PCORI fee if the HRA and the self-insured plan have the same plan year.
    - Result: the employer pays the PCORI fee once for individuals that participate in both self-insured plans.
- **However, if the plan sponsor provides an HRA along with a fully insured GHP that provides major medical coverage (even if the plans are considered "integrated"), the HRA and the fully insured GHP are considered separate arrangements – one self-insured plan and one specified insurance policy – each subject to the fee, respectively.**
    - **Result: the insurer pays the fee relative to the covered lives under the fully insured GHP and the plan sponsor pays the fee on the covered lives under the HRA* – even though the two arrangements cover the same individuals. Since the employer will likely see the cost of the insurer's fee payment passed through by the insurer in the form of higher premiums, the employer has now effectively paid the fee TWICE.**
    - ***Caveat:** The plan sponsor in this situation does catch a slight break: under the regulation, the plan sponsor is not required to include as lives covered under the HRA any spouse, dependent, or other beneficiary of the individual participant in the HRA. The plan sponsor will only pay the fee on employees participating in the HRA.

* * * * *

Please contact me if you have any questions.

Richard A. Szczebak, Esq.
617-399-0441 | rszczebak@parkerbrown.com