

## EMPLOYEE BENEFITS ALERT

### FINAL COMPARATIVE EFFECTIVENESS RESEARCH FEE RULES

The Internal Revenue Service and Treasury Department recently released final rules implementing a new tax mandated by the Affordable Care Act (ACA). The tax applies to insurance companies and plan sponsors of self-insured health plans, as described below.

ACA created a new Patient-Centered Outcomes Research Institute (PCORI) to conduct research evaluating and comparing health outcomes and assess the clinical effectiveness, risks and benefits of certain medical treatments. This research will be paid for by a new Patient-Centered Outcomes Research Trust Fund, which will be partly funded by the new fee.

#### **Who Will Pay the Fee and When?**

The fee applies to insurers and plan sponsors of insured and self-insured health plans that provide health coverage. For fully insured plans, the insurers will be responsible for paying the fee; for self-insured plans, the fee is paid by the plan sponsor.

Calendar-year plans will pay the fee for the 2012 through 2018 plan years. For fiscal year plans, the fee would apply to the first plan year beginning after October 1, 2011.

Plan sponsors must file a Form 720 “Quarterly Federal Excise Tax Return” annually (not quarterly) to pay the fee. The fee must be paid by July 31 of the calendar year immediately following the last day of the plan year. For a calendar-year plan, the first return and the first annual payment will be due by July 31, 2013.

#### **How Is The Fee Calculated?**

In the first year it applies, the fee will be \$1 multiplied by the average number of lives covered under the plan (including spouses and dependents). Thereafter, the multiplier is \$2 times the average number of covered lives. The multiplier will be reviewed annually and is subject to change.

Plan sponsors have several options for calculating the average number of covered lives, including, but not limited to, an actual count, and snapshot count methods. Plan sponsors must use one method for the entire plan year but may use different methods in different plan years.

#### **Are Any Coverages Not Subject to the Fee?**

The fee will not be assessed in connection with benefits that are “excepted benefits” under the Health Insurance Portability and Accountability Act (HIPAA). For example, dental and vision benefits that are insured under a separate insurance contract would not be subject to the fee. Self-insured dental and vision benefits would be exempt only if they are “limited-scope” benefits (i.e., participants elect this coverage separately from the medical benefit and pay an additional premium if they elect the coverage).

In addition, employee assistance, disease management, and wellness plans that do not provide significant medical care benefits are not subject to the fee.

Although retiree-only plans do not have to comply with many provisions in the ACA, retirees and their families count as covered lives, regardless of whether benefits are provided through the plan sponsor's active employee plan or through a retiree-only health plan. Further, the rules are applicable to COBRA coverage such that COBRA enrollees and their families will count as covered lives.

## EMPLOYEE BENEFITS ALERT

Health Reimbursement Arrangements (HRAs) are subject to the fee, but can be combined with self-insured health coverage to avoid double counting. However, if participants are covered under the HRA but are not covered under the plan sponsor's self-insured medical plan, those participants, but not their dependents, would also be counted.

When insured medical coverage coupled is with an HRA, both the insurer and the HRA plan sponsor will pay the fee, notwithstanding the potential for double counting of covered lives. Under a special rule, however, the HRA's plan sponsor may count only the HRA participants, and not the covered dependents, as covered lives for purposes of its HRA's fee liability.

### **What Should Plan Sponsors Do Next?**

Plan sponsors should determine the plans to which the fee will apply, the method of determining the number of covered lives, and calculate the impact on its budget. The Department of Labor has stated that except in cases of multiemployer plans and other similar plans, the fee may not be paid from plan assets.

*The Employee Benefits Alert is intended to keep readers current on matters affecting employee benefits and is not intended to be legal advice. If you have any questions about this alert or any other issues relating to employee benefits, please contact **Kathryn English** at 412.566.1226, **Elizabeth Goldberg** at 412.566.6016, **Michael Herzog** at 412.566.6130, **Sandra Mihok** at 412.566.1903, **Brandon Richards** at 412.566.1263, or **Paul Yenerall** at 412.566.1944.*

© Eckert Seamans Cherin & Mellott, LLC, 2013, all rights reserved.