GBS ACA Compliance

Self & Level Funded Plan Sponsors Must Submit PCORI Fee By July 31 Each Year

Fee Effective Through 2029

Quick Summary

What The Patient-Centered Outcomes Research Institute (PCORI) fee was created by the Affordable Care Act (ACA) and was effective beginning 2012.

Who Employers that sponsor self/level funded plans must submit the fee. Employers that sponsor insured plans need not submit because their carriers will submit instead.

When The fee is submitted and paid once a year by no later than July 31 of the following year

- For example, plans that ended at any time in 2021 pay the 2021 fee by July 31, 2022

Amount The fee is calculated by multiplying the per person fee amount by the plan's average number of covered lives. A plan MUST calculate average number of lives using one of the following:

- Actual count method
- Snapshot count method or snapshot factor method
- Form 5500 method

The per person fee amount is adjusted each year and takes effect each October. Consequently, the amount an employer pays per covered life depends on when the plan year ends. For example, the fee due July 31, 2022 has two different fee amounts:

- Plans that ended January 2021 through September 2021 pay $2.66 per covered life.
- Plans that ended October 2021 through December 2021 pay $2.79 per covered life.

How The fee is submitted using IRS Form 720, see the IRS PCORI Fee webpage.

In-Depth Summary

Background

The Patient-Centered Outcomes Research Institute (PCORI) fee helps fund the PCOR Institute. The Institute was created by the Affordable Care Act (ACA) to curate objective comparative outcomes and effectiveness research. Employers that sponsor self/level funded plans calculate the appropriate fee amount based on number of "covered lives" and submit the fee through IRS Form 720. Originally, the fee was set to run from 2012 to 2019, but legislation enacted in December 2019 (Further Consolidated Appropriations Act 2020) extended the fee for an additional 10 years through 2029.

Plans Subject to the PCORI Fee

Most all medical plans that provide health or accident benefits primarily to individuals living in the U.S. must pay the fee. Examples of plans subject to the fee include:

- Major medical
  - This includes retiree-only coverage and COBRA continuation coverage
- Health Reimbursement Accounts (HRAs)
  - An HRA is considered a self-funded plan so the PCORI fee must be paid for the HRA whether it is a stand-alone HRA or is integrated with an insured major medical plan. Note that if integrated with an insured medical plan, the carrier pays the PCORI fee for the underlying insured plan, not the HRA. However, a separate PCORI fee need not be paid for an HRA when an employer also sponsors a self-insured major medical group health plan with the same plan year.
- MEC plans that provide more than just excepted benefits

Plans NOT Subject to the PCORI Fee

- "Excepted" benefits such as stand-alone dental or vision plans, and most health FSAs,
- HRAs that are integrated with self-funded plans with the same plan year,
- HSAs (but the underlying high deductible health plan would be subject to the fee),
- Most Health FSAs (unless the arrangement does not meet excepted benefits requirements), and;
- Employee Assistance Programs (EAPs), disease management, and wellness programs (as long as they do not provide significant benefits in the nature of medical care or treatment).

Self-funded Plans

Only employers that sponsor self/level funded plans must take action to submit the PCORI fee. Employers that sponsor insured plans need take no action because the carrier will forward the fee to the IRS on behalf of the plan.

- Third Party Administrators (TPAs) may help prepare the 720 Form for a self-funded plan, but an employer that sponsors the plan must file it and is responsible for ensuring the correct amount is paid timely (by no later than July 31 each year).
- To submit the fee, use IRS Form 720 and deliver by U.S. mail, private delivery services, or electronic. If electronically filing, use the Electronic Federal Tax Payment System (EFTPS). *See Form 720 Instructions.*
- The amount paid by an employer is based on number of "covered lives" which must be calculated using one of three allowed calculation methods. The number of "covered lives" is then multiplied by a specific "per covered person" amount, which is adjusted each year. Thus, employers should use the most recently updated Form 720 for the applicable reporting year.

The "Amount" Per Covered Life:

The original fee amount per participant in 2012 was $1.00 per covered life but the amount has increased over time through annual indexing. That adjustment takes effect October of each year. Consequently, the amount an employer pays per covered life depends on when the plan year ends.

- For example, for a plan year that ended January, February, March, April, May, June, July, August or September 30, 2020, the fee is $2.66 per "covered life" and for a plan year that ended October, November or December 2020, the fee is $2.79 per "covered life".

These rates and time periods are clearly shown on Form 720 under Part II, line/section 133 so it is difficult to make a mistake on this amount as long as the most current Form 720 is used.

The Average Number of "Covered Lives"

Form 720 requires entering the average number of covered lives. The sponsor of a self/level funded plan must use one of the three counting methods to accurately determine the average number of covered lives. For this process, the TPA may be able to provide assistance. When choosing a method, it is valuable to select the method that results in the lowest number.

  - For example, if enrolled employees with family coverage often cover more than two family members, the employer will likely pay lower PCORI fees by using the "Snapshot factor" method explained below.

1) Actual count method

Add the number of covered lives for each day of the plan year and divide by that number of days (365, or less for or a short plan year). In practice, if you use this method, you probably will be counting the average number of enrollees per month and dividing by 12, since most TPAs report numbers on a monthly basis, not a daily basis.

2) Snapshot methods

There are two types of snapshot methods. The general methodology is the same under each: add the total number of lives covered on one or more dates in each quarter, and divide by the total number of dates on which the count was made. A plan need not pick exactly the same date or dates in each quarter, but each date used for the second, third, and fourth quarters must be within three days of the date in that quarter that corresponds to the date used for the first quarter, and all dates used must fall within the same ERISA plan year.

  - 2.A. Snapshot Count Method:
    - The number of lives equals the actual number of lives covered on the designated date or dates, divided by the number of dates on which a count was made. This includes employees, spouses, other dependents, retirees, and COBRA qualified beneficiaries.
  - 2.B. Snapshot Factor Method:
    - The number of lives equals the sum of:
      - the number of employee participants with self-only coverage on the selected date(s), plus
      - the number of employee participants with coverage other than self-only coverage on the same date(s), multiplied by 2.35
    - As noted previously, the snapshot factor method may result in the lowest PCORI fees if enrolled employees with family coverage often cover more than 2 family members.

3) Form 5500 method

A calendar year plan may use the 5500 method only if the 5500 is filed no later than the July 31 PCORI fee due date. This means an employer cannot use this method for PCORI if it files for an extension to submit the 5500 later than July 31.

- If the plan *only provides self-only cover*age: add the number of plan participants at the beginning and end of the plan year (as reported on lines 5 and 6(d) of the 5500) and divide by two.
- If the plan *also offers coverage other than self-only*: add the number of plan participants reported on lines 5 and 6(d) at the beginning and end of the plan year and do not divide by two.

The Due Date:

The due date is by July 31 each year. Note that for certain non-calendar year plans, there is a longer span of time after the end of a plan year than for other plans before the fee is due. This is because technically, the due date is July 31 "of the calendar year immediately following the last day of the policy year or plan year to which the fee applies."

- For example, plan years ending March 31, 2021 or September 30, 2021 or December 31, 2021 must all pay the PCORI fee by July 31, 2022.

Instructions to Complete Form 720

IRS Form 720 is used by the IRS to collect several different fees from employers. To complete the form for the PCORI fee, start with the employer information in the header section above Part I. Under "quarter ending" enter the last day of second quarter (June 30) . Then go to second page, Part II, line 133 section (c) or section (d) under PCOR fee and complete the following:

- Column (a) report the average number of lives covered
  - The sponsor of a self/level funded plan must use one of three specific methods to calculate the average number of covered lives. Please refer to the *How to Determine the Average Number of Covered Lives* section in this summary.
  - The number of covered lives is based on the average number of enrollees for the plan or policy year, whether that is a full 12-month year or a short plan or policy year. Thus, if an employer offers an insured plan with a policy renewal date of January 1, but as of October 1 changes to a self/level funded plan, the insurer will pay the PCORI fee for the January 1 - September 1 policy year, and the plan sponsor will pay the PCORI fee for the plan year that begins October 1, whether that is a full or short plan year. (See Q/A 13 on the IRS PCORI Fee webpage.)
- Column (b) apply the applicable rate
  - The amount per covered life is clearly marked in this column and is accurate as long as the appropriate Form 720 is used. Make sure you are using the update

- Column (c) enter the fee due in column
    - Note the form does not automatically calculate the amount, so calculate carefully.

On the last row under Part II (line 2) enter fee amount again. Under Part III complete lines 3 and 10. Then complete the "Sign Here" section and complete payment voucher 720-V for "second quarter"

Correcting Form Errors and Failing to File

Failure to File:

The IRS guidance does not directly address how to remedy a failure to file, so most recommend filing as soon as possible after the discovery. This helps show that you did not willfully fail to file. The regulations say that those who *willfully* fail to file will have penalty assessments in higher amounts compared to those who unintentionally failed to file.

Correcting Errors:

Corrections are made using Form 720X. IRS PCORI Fee FAQ 16 says: "a plan sponsor or policy issuer should make corrections to a previously filed Form 720 by filing a Form 720-X, Amended Quarterly Federal Excise Tax Return, including adjustments that result in an overpayment. Form 720-X may be filed anytime within the applicable limitation period."

Form 720X and the instructions do not specifically refer to PCORI fees. However, there is space to include an explanation of adjustments, which plan sponsors can use to identify the PCORI fee.

If an employer discovers an error on a Form 720 that has already been filed, the employer must decide whether and when to correct it.

- Some suggest waiting until the IRS discovers and makes contact. After contact, the employer would decide whether to contest the IRS fee determination or to pay the billed amount (which might come with a penalty), and would provide an explanation, which may not be considered by the IRS sufficient justification to reduce or eliminate the penalty.
- Others suggest correcting the mistake as soon as possible after a mistake is identified, which supports the employer's position of intent to comply. This of course is a safe, more conservative approach.

When making this decision, employers may find it valuable to consider the type of mistake that needs correction, e.g. whether the mistake is an overpayment or an underpayment.

Record-keeping Requirements

The IRS may request documentation of how of the fees were calculated, so employers should keep records to show how they determined the number of covered lives and the fee amount to apply. The Form 720 instructions advise taxpayers to keep their returns and supporting documentation for at least four years from the date the tax return was due, or if later, the date it was paid or file.

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