Bernie Lowe & Associates, Inc.
"Beyond the Product"

Health Care Reform Update

IMPORTANT NOTICE REGARDING HEALTHCARE REFORM
Update #6 **December, 2012**

IRS Issues Final Regulations on PCORI Fees

The IRS has issued final regulations implementing the fees needed to fund the Patient-Centered Outcomes Research Institute (PCORI). These fees apply to health insurers and self-insured plan sponsors starting with policy and plan years ending after October 1, 2012 and before October 1 2013. For the first year the fee is $1.00 times the average number of covered lives under the policy or plan. For the second year and later, the rate will be $2.00, subject to adjustment based on increases in the projected per capita amount of National Health Expenditures. The regulations are effective immediately and finalize those proposed in April, 2012.

Affected Plans and Policies

PCOR fees are paid on accident or health coverage, including retiree-only plans. Also COBRA coverage must be included in calculating the fees. There are exceptions for excepted benefits; policies or plans that primarily cover employees who work and reside outside the United States, EAPs, disease-management and wellness programs that do not provide significant benefits in the nature of medical care.

Calculation Methods

Self-insured plans can use three methods to calculate the average number of covered lives.

- actual count
- snapshot, or
- Form 5500

For the snapshot method, the 2nd, 3rd, and 4th quarters can fall within three days of the corresponding 1st quarter date to avoid complications of weekends and holidays. The regulations also clarify that the Form 5500 method cannot be utilized by plan sponsors whose Form 5500 is filed on an extended deadline that is later than the July 31 due date for the PCORI fee.

Insurers have four methods available, two of which allow use of calendar year data already compiled, rather than policy year data.

Multiple Arrangements

The IRS regulations do not allow fully insured and self-insured arrangements with a common plan sponsor to be treated as one plan. However, the regulations allow the sponsor of a self-insured health plan that includes both fully insured and self-insured options to disregard the lives covered solely by the fully insured option (those lives will be paid by the insurer).

If a plan sponsor maintains multiple self-insured arrangements the arrangements can be treated as a single plan if they have the same plan year.

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HRAs and Health FSAs

The final regulations retained the rule that allows sponsors of HRAs and nonexcepted health FSAs to count only employee-participants as covered lives and not spouses or. Also note that under the multiple arrangements rule described above, an employer who offers a fully insured health plan and an HRA or nonexcepted health FSA, PCORI fees will be paid by the insurer for the lives covered by the health plan including spouses and dependents. The employer will pay fees on the employee-participants covered by the HRA or nonexcepted health FSA.

Transition Relief

The final regulations retain the transition relief provided under the proposed regulations for counting covered lives during the period before regulations were issued.

Note the DOL has indicated the PCORI fees generally are not permissible plan expenses under ERISA, since they are imposed on the plan sponsor and not the plan.

For more information:

http://www.gpo.gov/fdsys/pkg/FR-2012-12-06/pdf/2012-29325.pdf