Health Care Reform Management Alert Series

ACA Update: TRP Fee, Excepted Benefits and PCORI Fee

Issue 87

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This is the eighty-seventh issue in our series of alerts for employers on selected topics in health care reform. (Click here to access our general summary of health care reform and other issues in this series). This series of Health Care Reform Management Alerts is designed to provide an in-depth analysis of certain aspects of health care reform and how it will impact your employer-sponsored plans.

Transitional Reinsurance Fee Enrollment Count Due by November 15, 2014

Less than a month before the **November 15, 2014, reporting deadline**, CMS finally released the form that health insurers and plan sponsors of self-funded major medical plans may use to report the number of persons enrolled in their health plan. As reported in Issues *47* and *56* of our Health Care Reform Alert Series, HHS and the IRS will use this enrollment count for determining the amount the health insurer or plan sponsor owes under the Transitional Reinsurance Program fee.

Persons submitting the form must generally follow these steps:

1. Go to *www.pay.gov*.

2. Register using the link at the top of the page.

3. Log-in using the details provided during the registration process.

4. Type "transitional reinsurance" in the search bar, and click through to the enrollment form.

5. Enter the necessary billing contact information (and back-up contact information).

6. On page 2, select whether the fee will be paid in two installments or all at once. Plans have the option to pay: (1) the

entire 2014 benefit year contribution in one payment no later than January 15, 2015 reflecting $63.00 per covered life; or (2) in two separate payments for the 2014 benefit year, with the first remittance due by January 15, 2015 reflecting $52.50 per covered life, and the second remittance due by November 15, 2015 reflecting $10.50 per covered life. **NOTE: The fee is not payable now. Regardless of which option is selected, the first payment is not due until January 15, 2015.**

7. Select the year to which the payment relates (here, 2014).

8. Enter the participant enrollment count. As described in greater detail in Issue *47*, plans should count participants enrolled during the first nine months of 2014 using the actual method, snapshot method, or Form 5500 method. You will be asked to confirm the enrollment count in a separate line. The form will automatically populate the amount owed based on the enrollment count.

9. Complete the necessary acknowledgments and select "Continue".

10. Upload the necessary supporting documentation.

    (a) For more on this requirement, click *here* and *here*.

    (b) Draft supporting documentation forms are available by visiting *www.regtap.info* (registration required), clicking on "Library", selecting "Reinsurance-Contributions" in the filter, and selecting "Supporting Documentation: Job Aid".

11. Enter payment information.

As a reminder, the fee only applies for major medical coverage, and the insurer is responsible for paying the fee for fully-insured major medical coverage. Retiree major medical coverage is generally subject to the fee, but retiree coverage that pays secondary to Medicare is not subject to the fee.

Agencies Release Final Regulations on Excepted Benefits

The IRS, DOL and HHS also released final regulations concerning the recently expanded definition of "excepted benefits," as originally reported in Issue *74*. As noted in our earlier alert, excepted benefits are exempt from most of the Affordable Care Act's insurance market reforms (as well as a host of other federal mandates). Moreover, enrollment in an excepted benefit will not render an employee ineligible for a tax credit on the Health Insurance Marketplaces.

The final rules largely tracked the proposed regulations, with a few notable changes/enhancements:

- The final rules expand the definition of excepted benefits to include any self-funded dental/vision benefits under which the claims for the benefits are administered under a contract separate from claims administration for any other benefits under the plan. Proposed regulations already provided that self-funded dental/vision benefits would be excepted benefits if participants were permitted to opt-out of those benefits.
- The final rules adopted the following four criteria for determining whether an EAP constitutes an excepted benefit:
    - The EAP does not provide significant benefits in the nature of medical care.
    - The EAP benefits cannot be coordinated with the benefits under another group health plan. For purposes of this element, the final rules removed the earlier prohibition on the EAP being financed by another group health plan. The other requirements related to this criteria, however, were retained (i.e., that a participant must not be required to exhaust benefits under the EAP before being eligible under another group health plan and that eligibility for benefits under the EAP cannot be dependent upon participating in another group health plan).

    - No employee premiums or contributions may be required as a condition of participation in the EAP.
    - The EAP may not impose any cost-sharing requirements.
- Notably, the preamble to the final rules states that treating wellness programs as excepted benefits by including them in an EAP would circumvent consumer protections contained in the ACA. Employers are hoping for additional guidance related to wellness programs.
- Additionally, the final rules do not address the limited wrap-around excepted benefit, noting that numerous comments were received and that future regulations would address those rules in greater detail.

PCORI Fee Inflation Adjustment Announced

In recently released IRS Notice 2014-55, the IRS announced the inflation-adjusted amount used to determine the Patient-Centered Outcomes Research Institute (PCORI) fee for plan years ending on or after October 1, 2014. The annual cost per covered life will be determined based on the previous year's cost and the increase in the projected per capita amount of National Health Expenditures as determined by HHS. For plan years ending on or after October 1, 2014 and before October 1, 2015, this amount will be $2.08 per covered life (for plan years that ended between October 1, 2013 and September 30, 2014, the amount was $2.00 per covered life). As a reminder, the PCORI fee is payable using IRS Form 720, due no later than July 31st of the year following the year to which the fee relates.

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