

EMPLOYEE BENEFIT ALERT



DECEMBER 7, 2020

UPDATED PCORI FEES RELEASED

In Notice 2020-84, the IRS provided the adjusted PCORI fee of \$2.66 for plan years ending in October 2020 through September 2021. Employers who sponsored self-funded group medical plans ending sometime during this time are required to report and pay the ACA Patient-Centered Outcomes Research Institute (PCORI) fees annually. In the spending bill passed late in 2019, the PCORI fee (which was set to expire) was extended another 10 years.

General information for PCORI fees can be found at www.irs.gov/newsroom/patient-centered-outcomes-research-institute-fee. On this site, the IRS provides a link to Form 720, a chart describing which types of plans are subject to the fee, a chart showing plan end dates with applicable fees and due dates, and several FAQs.

PLANS SUBJECT TO THE FEE

The PCORI fee applies to most group health plans, including HRAs, but not to excepted benefits (e.g. health FSAs and limited-scope dental and vision).

- Fully-Insured Plans: Health insurance carriers pay the fee directly in the case of fully-insured plans.
- Self-Funded Plans: Employers are responsible for reporting and paying the fee for any self-funded group health plans, including HRAs.

REPORTING THE FEE

The fee is paid using quarterly excise tax Form 720 and must generally be paid no later than July 31st of the year following the last day of the plan year.

The fees due July 31st, 2021 will differ based on the employer's plan year.

- \$2.54 per covered life for plan years ending in January – September 2020.
- \$2.66 per covered life for plan years ending in October – December 2020.

CALCULATING THE AVERAGE COVERED LIVES

Self-funded plans may generally use one of three methods to determine the average covered lives used for reporting and paying the PCORI fee: (i) the actual count method; (ii) the snapshot method; or (iii) the Form 5500 method. Plan sponsors must stick with one method for the entire plan year, but are allowed to change from year to year. There are a couple of special rules for counting covered lives:

- Multiple Self-Funded Plans – If one plan sponsor maintains more than one self-funded group health plan with the same plan year, the arrangements can be treated as a single plan for purposes of the fee (e.g. self-funded group medical plan and an HRA).
- HRAs – An employer who sponsors an HRA alongside a fully-insured medical plan is required to pay the fee only for each HRA participant/employee (not required to count dependents or beneficiaries).

FAILURE TO REPORT AND PAY

The PCORI rules do not contain a specific penalty for failure to report or pay the PCORI fee; however, since this fee is considered an excise tax, any related penalty for failure to file a return or pay a tax would seem to apply.

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Code §6651 includes the penalties for failure to file a return or pay taxes as set forth below:

- 5% of the excise tax due for each month or part of a month the return is late, with a cap of 25% of the unpaid tax (minimum penalty for failure to file within 60 days of its due date, including extensions, is the lesser of \$100 or the amount of tax owed with the return).
- .5% of the any tax not paid by the due date for each month or part of a month the tax remains unpaid, up to 25% of the unpaid tax.

On top of the penalties, interest can be charged on unpaid excise taxes. In some cases, penalties may be waived if the plan sponsor has reasonable cause and the failure was not due to willful neglect.

No formal guidance has been provided by the IRS for those who have failed to pay the PCORI fee, so the recommendation is that employers should file a Form 720 for the applicable year (or Form 720X for an amendment) sooner rather than later for any missed fees and to pay any associated fines or penalties.

As always, should you have any questions, please contact your [Parker, Smith & Feek Benefits Team](#). While every effort has been taken in compiling this information to ensure that its contents are totally accurate, neither the publisher nor the author can accept liability for any inaccuracies or changed circumstances of any information herein or for the consequences of any reliance placed upon it.