

# EMPLOYEE BENEFIT ALERT



APRIL 2022

## PCORI Fees

The Affordable Care Act (ACA) created a nonprofit corporation, the Patient-Centered Outcomes Research Institute (PCORI) to support clinical effectiveness research. It is funded in part by fees paid by health insurers and sponsors of self-funded health plans (PCORI fees), which are reported on paid annually using Form 720. General summary information regarding PCORI fees can be found at <https://www.irs.gov/newsroom/patient-centered-outcomes-research-institute-fee>.

### PLANS SUBJECT TO THE FEE

The PCORI fee applies to most group health plans, but not to excepted benefits. Health reimbursement arrangements (HRAs) are self-funded plans and therefore subject to the PCORI fee as well. This includes qualified small employer HRAs (QSEHRAs) and individual coverage HRAs (ICHRAs). Retiree-only plans are also subject to the PCORI fee. The IRS published a chart that describes the different types of plans subject to the fee here – <https://www.irs.gov/newsroom/application-of-the-patient-centered-outcomes-research-trust-fund-fee-to-common-types-of-health-coverage-or-arrangements>.

Health insurance carriers pay the fee directly in the case of fully-insured plans, but employers are responsible for reporting and paying the fee for any self-funded group health plans, including HRAs.

Originally the PCORI fee applied to plan years ending after September 30, 2012 and before October 1, 2019. However, the Further Consolidated Appropriations Act, 2020 extended the PCORI fees another 10 years to 2029.

### REPORTING THE FEE

The fee is paid using quarterly excise tax Form 720, Line 133, and must generally be paid no later than July 31st of the year following the last day of the plan year. The fee is reported in the 2nd quarter (e.g., for the quarter ending June 30, 2021).

Payment amounts are increased annually and differ based on the employer's plan year, but the fee is less than \$3 per covered life. The IRS chart illustrating plan year end dates with applicable fees and due dates can be found here - <https://www.irs.gov/affordable-care-act/patient-centered-outreach-research-institute-filing-due-dates-and-applicable-rates>.

- \$2.66 per covered life for plan years ending January – September 2021.
- \$2.79 per covered life for plan years ending October – December 2021.

### 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. Plan sponsors must stick with one method for the entire plan year, but are allowed to change methods from year to year. COBRA participants and retirees should be counted, regardless of which method below is chosen.

1. **Actual Count Method** – Calculate the lives covered for each day of the plan year and divide by the number of days in the plan year.
2. **Snapshot Method** – Add the lives covered on a consistent date each month or quarter, and divide

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the total by the number of dates on which a count was made (e.g., divide by 12 if the count is done each month, or by 4 if the count is done each quarter). Under the snapshot method, there are two methods for counting family members:

- a. Count the actual lives covered on the designated date; or
- b. Count the participants with self-only coverage on the designated date, plus the participants with coverage other than self-only coverage on the designated date multiplied by 2.35.

3. **Form 5500 Method** – Use the participant count reported on the Form 5500 for the plan year. The number of average covered lives is determined by adding the participant counts at the beginning and the end of the plan year. However, if a plan offers only single coverage, the final result is divided by 2. NOTE: This method may be used only if the Form 5500 is filed no later than the due date for the fee imposed for that plan year.

There are two special rules that may apply for counting covered lives when an employer offers multiple self-funded plans or offers an HRA integrated with a fully-insured group medical plan.

- **Multiple Self-Funded Plans** – If one plan sponsor maintains more than one self-funded health plan with the same plan year, the arrangements can be treated as a single plan for purposes of the fee. In other words, each unique covered life is only counted once.
- **HRAs** – An employer who sponsors an HRA integrated with a fully-insured medical plan is required to pay the fee only with respect to each HRA participant/employee; the employer is not required to count dependents or beneficiaries.

For short plan years, there are no special rules for pro-rating the average covered lives or the fee. If the employer is using the actual count method, the total is divided by a lesser number of days due to the short plan year. If the snapshot method is used, the total is divided by the number of months or quarters of the short plan year. See the FAQ from the IRS found here - [https://www.irs.gov/affordable-care-](https://www.irs.gov/affordable-care-act/patient-centered-outcomes-research-trust-fund-fee-questions-and-answers)

[act/patient-centered-outcomes-research-trust-fund-fee-questions-and-answers](https://www.irs.gov/affordable-care-act/patient-centered-outcomes-research-trust-fund-fee-questions-and-answers), specifically Q&A #12-14.

## FAILURE TO PAY THE FEE

The IRS has not provided formal guidance for entities that fail to pay the PCORI fee, but it is generally advisable to file a Form 720 for the applicable year (or Form 720X for an amendment) as soon as possible for any missed fees and to pay any associated fines or penalties. A separate Form 720 should be filed for each missed plan year rather than paying fees for multiple plan years on the same Form 720.

The PCORI rules do not contain a specific penalty for failure to report or pay the PCORI fee, but 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. Code §6651 includes the penalties for failure to file a return or pay taxes.

- The penalty is 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. However, the minimum penalty for failure to file within 60 days of the due date, including extensions, is the lesser of \$100 or the amount of tax owed with the return.
- There is also a penalty for failing to pay the excise tax on time. It is equal to .5% of 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 to pay was not due to willful neglect.

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