



# EXPERT UPDATE



## Health Reform Final Regulations – PCOR Fees



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On December 6, 2012, the IRS issued final regulations for the Patient-Centered Outcome Research Trust Fund. Health Reform provides for the establishment of this nonprofit institute to assist patients, clinicians, purchasers, and policy-makers in making informed health decisions by advancing the quality and relevance of evidence-based findings.

As communicated in a previous compliance update, the statute imposes a fee on an issuer of a specified health insurance policy for each policy year ending on or after October 1, 2012 and before October 1, 2019. The PCOR fee, which is one dollar for policy years ending on or after October 1, 2012 and before October 1, 2013, and two dollars for policy years ending on or after October 1, 2013 and before October 1, 2014, is based on average number of lives (members) covered under the policy. Beginning with policy years ending on or after October 1, 2014, the fee will be increased based on the increases in the projected per capita amount of National Health Expenditures.

The final regulations include some modifications, but for the most part, there are no significant changes from the proposed regulations.

## Highlights –

- In general, the fee is paid on accident or health coverage. The fee is not required for excepted benefits, most expatriate plans, EAPs, disease-management and wellness programs that do not provide significant medical benefits.
- The final regulations confirm that retiree-only plans are subject to the fees and that COBRA participants must be included in calculating the fees as well.
- As the proposed regulations indicated, self-insured plan sponsors can select from three methods to determine the average number of covered lives for the calculation of the fee - the Actual Count method, the Snapshot method or the Form 5500 method.
- For the snapshot method, the regulations now allow the dates used in the 2nd, 3rd, and 4th quarters to fall within three days of the corresponding 1st quarter date, to avoid the complications of weekends and holidays.
- The regulations also clarify that the Form 5500 method will not be available to sponsors whose Form 5500 is filed on an extended deadline **that is later than the July 31 due date for the PCOR fee.**
- The final regulations identify that if a plan sponsor maintains multiple self-insured arrangements (e.g., major medical coverage and an HRA), the plans can be treated as a single plan if they operate on the same plan year.
- The final regulations also permit 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.
- The final regulations allow sponsors of HRAs and non-excepted health FSAs to count only employee-participants as covered lives. There is no requirement to count spouses or dependents whose expenses may also be reimbursable under the plan. It is also important to note that when an employer sponsors a fully insured health plan along with an HRA or non-excepted health FSA, PCOR fees will be paid by the insurer on the lives covered by the health plan, including spouses and dependents, and by the employer on the employee-participants covered by the HRA or non-excepted health FSA.

- The final regulations also still include the transition relief illustrated in the proposed regulations for counting covered lives during the period before regulations were issued, but requests for additional relief were denied.

## **Calculating the Fees –**

To determine the average number of covered lives covered under a specified health insurance policy, insurers are permitted to use one of the following methods:

- The Actual Count Method
- The Snapshot Method
- The Member Months Method
- The State Form Method

A plan sponsor of an applicable self-insured health plan is liable for the fee. Plan sponsors of self-insured plans are permitted to use one of the following three methods:

### ***The Actual Count Method***

Add total number of lives covered for each day of the plan year and then divide by the total number of days in the plan year.

### ***Snapshot Method***

Add total number of lives covered on a date during the first, second, or third month of each quarter of the plan year and then divide that total by the number of dates on which the count was made.

### ***Form 5500 Method***

For employers who have an average of more than 2 members per contract, this approach for adding members is most advantageous. Add the sum of total participants at the beginning and the end of the plan year as reported on the Form 5500 for the applicable self-insured plan and then divide by two.

We encourage plan sponsors of self-insured plans to review Treasury Decision 9602, 12/06/2012, IRC Sec(s) 4375 before adopting any of the three methods summarized above. We have attached the link to this document for your convenience.

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

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