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News & Types: Client Advisories

Reminder:First PCORI Fee Due July 31, 2013 For Calendar Year Plans

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Practices: Employment, Labor & Benefits

The Affordable Care Act ("ACA") imposed a new fee on plan sponsors and issuers of individual and group policies to fund the Patient-Centered Outcomes Research Institute (the "PCORI"), which is a private, non-profit corporation designed to assist the public in making informed health care decisions. The fee, commonly known as the "PCORI Fee" is the funding source for the research. The PCORI Fee is assessed on health insurers (in the case of an insured plan) and sponsors of "applicable self-insured plans." Applicable self-insured plans include medical and prescription drug plans, health reimbursement arrangements ("HRA") and certain health flexible spending accounts ("FSA"). A special rule applies if the HRA and FSA is maintained in conjunction with an applicable self-insured plan. In that case, the plan will be treated as a single plan with the applicable self-insured plan. In contrast, an HRA or FSA that is maintained in conjunction with the insured plan will be subject to the PCORI Fee. Excluded from the definition of applicable self-insured plans are plans providing only HIPAA-excepted benefits (stand-alone dental, vision, accident, disability and long-term care plans), expatriate plans (plans covering employees working and residing outside the United States) and employee assistance programs, disease management programs or wellness programs provided the program does not provide significant benefits in the nature of medical care or treatment.

The PCORI Fee applies for each plan year ending on or after October 1, 2012 and before October 1, 2019 and is due annually by July 31 of the year following the last day of the plan year. These fees will be calculated based on the average number of lives covered under the policy or plan. For plan years ending before October 1, 2013, the fee is set at $1 multiplied by the average number of covered lives under the plan and $2 for the next plan year. The fee is subject to adjustment through 2019 based on health care inflation. Therefore, for calendar year plans, the first PCORI Fee is due on July 31, 2013 for the 2012 plan year.

The fee is reportable on the Form 720, Quarterly Excise Tax Return. The IRS has recently updated the Form 720 and the instructions for plans facing the July 31, 2013 due date. The IRS has also issued Q&As and a chart summarizing the plans or arrangements that are subject to the PCORI Fee and the person responsible for paying and reporting the fee. The Form 720, the Q&As and the PCORI Fee Chart can be found at www.irs.gov along with other information relating to the implementation of other tax provisions under the ACA.

In a separate announcement, on June 7, 2013, the Office of the Chief Counsel of the IRS concluded that PCORI Fees are ordinary and necessary business expenses and thus are deductible business expenses even though the tax is classified and payable as an excise tax. In contrast, certain other taxes imposed by the ACA such as the employer shared responsibility tax and the excise tax on high cost employer-sponsored health

coverage are nondeductible as well as certain other fees imposed by the ACA such as the annual fee on branded prescription pharmaceutical manufacturers and importers, the annual fee on medical device manufacturers and importers, and the annual fee on health insurance providers are expressly treated as nondeductible taxes.

Action: If your company sponsors a plan that is insured by an insurance company, contact your broker or insurance company to ensure that the PCORI fee is being calculated and paid on your behalf. If your company sponsors a self-insured plan (including a HRA or FSA maintained in conjunction with an insured plan), you are responsible for calculating the average number of lives covered under the plan, reporting and paying the fee with respect to the plan. Therefore, we recommend that you begin reviewing your plans to determine whether the fees apply and begin calculating the applicable fees.