TELEPHONE: 312.833.5300 VIA EMAIL: info@wkalegal.com

WANG KOBAYASHI AUSTIN LLC

employee benefits & executive compensation law

in focus

March 2013

Health Care Reform: New Fees for Health Plans

The Affordable Care Act established two new fees that will soon take effect for many health plans.

PCORI Fees

The Affordable Care Act established a new entity, the Patient-Centered Outcomes Research Institute, to support clinical effectiveness research. This institute will be funded in part by new fees (the "PCORI fees") that must be paid by certain health insurers and self-insured health plan sponsors. The PCORI fees apply to each policy year (for insured plans) or plan year (for self-insured plans) ending on or after October 1, 2012 and before October 1, 2019.

The following arrangements are subject to the new PCORI fee requirements:

- Accident and health insurance policies (both issued to individuals and under group health plans)
- Group health plans that provide accident or health coverage (*i.e.*, self-insured plans)
- Retiree-only health plans
- Prepaid health coverage arrangements
- Accident and health coverage provided under COBRA
- Certain health reimbursement arrangements (HRAs)
- Health flexible spending arrangements (FSAs) that are not treated as excepted benefits

The following arrangements are specifically excluded from the PCORI fee requirements:

- Excepted benefits (*e.g.*, disability, accident only, workers' compensation, on-site medical clinics, stand-alone dental and vision benefits, long-term care insurance, certain health FSAs)
- Stop-loss insurance policies
- Indemnity reinsurance policies
- Group policies that are issued to cover employees working outside of the United States
- Medicare, Medicaid, and Children's Health Insurance Program (CHIP)
- Accident or health care arrangements for US Armed Forces personnel (active service and veterans)

- Certain accident and health care arrangements provided to members of Indian tribes
- Employee assistance programs, disease management programs, and wellness programs that do not provide significant medical benefits

For policy or plan years that end between October 1, 2012 and October 31, 2013, the fee is equal to $1 per the average number of covered lives (*e.g.*, covered employees, spouses, and dependents) during the policy year or plan year. The PCORI fees are scheduled to increase to $2 per average number of covered lives for plan years ending on or after October 1, 2013 and before October 1, 2014, and are subject to additional increases after that.

The first PCORI fees will be due by July 31, 2013 for plan and policy years ending prior to that date. The insurer is responsible for determining the average number of covered lives and reporting and submitting the fee for insured plans. The plan sponsor is responsible for determining, reporting, and submitting the fee for self-insured plans.

IRS guidance on PCORI fees, including the methods issuers and sponsors must use to calculate the fee, can be found here.

Reinsurance Program Fees

In addition to the new PCORI fees, certain health plans will also be subject to a new transitional reinsurance program fee, starting in 2014 and ending in 2016. The reinsurance program is intended to help stabilize premiums in the individual and small plan market in the first few years that the new exchanges come into existence. HHS has issued proposed regulations that address how much plans and sponsors must pay and who is responsible for making the payment.

The fee will be calculated by dividing the amount of the reinsurance fund each year by the estimated number of enrollees in all of the plans subject to the reinsurance fee payment. For 2014, this "reinsurance fund" amount is projected to equal $12 billion plus administrative expenses (currently estimated by HHS at $20 million). Using the calculations under the proposed regulation, HHS estimates an annual contribution of $63 per covered life for 2014. HHS is seeking comments on the contribution calculations.

The reinsurance fee must be paid with respect to all group health plans. For insured plans, the insurance company will be responsible for contributing the reinsurance fee. For self-insured plans, the plan is responsible for the fee, but the plan's third party administrator will generally be responsible for submitting the fee on behalf of the plan.

The plans subject to the fee are those that provide major medical coverage (*e.g.*, coverage for a broad range of treatments, including diagnostic, medical, and surgical conditions in in-patient, outpatient, and emergency room settings).

outpatient, and emergency room settings).

Excluded from the calculation of the fee are plans with limited scope coverage (*e.g.*, stand-alone dental or vision plans), private Medicare, Medicaid and CHIP plans, HRAs integrated with a group health plan, HSAs, health FSAs, employee assistance programs, wellness programs, stop-loss insurance policies, and military health benefits (*i.e.*, TRICARE). Note that many of the plans excluded from the reinsurance fee are still subject to the PCORI fee described above. Plan enrollees for whom Medicare is the primary payer are also excluded from the count.

By November 15 of each applicable year (2014, 2015, and 2016), the contributing entity must report to HHS the number of covered lives subject to the fee. This number includes not just the covered employee, but also any spouses and dependents who are also covered under the plan. Within 15 days of submission of the enrollment number (or by December 15 at the latest), HHS would notify the contributing entity of the amount due. Payment would need to be submitted within 30 days of that notification.

For more information about group health plan fees under the Affordable Care Act, please contact:

Stacey Austin	(312) 833-5298	staceyaustin@wkalegal.com
Jennifer Kobayashi	(312) 833-5299	jenkobayashi@wkalegal.com
Andy Wang	(312) 833-5300	andywang@wkalegal.com