HEALTHCARE REFORM FEES AND TAXES

The Health Insurance Sector Tax, PCOR Fee, Reinsurance Fee, and Cadillac Tax

There are a number of fees embedded in the Patient Protection and Affordable Care Act (PPACA). It is important to understand if the fees will be imposed on your employer-sponsored group health plans, and if so, how and when the fees will be paid. This white paper addresses the application of the Health Insurance Sector Fees, the Patient Centered Outcomes Research Institute Fees, and the Transitional Reinsurance Fees to employer sponsored group health plans. Note that states may impose additional taxes or fees on health insurance issuers in conjunction with the fees discussed in this white paper. A discussion of state taxes and fees is outside the scope of this white paper.

The Health Insurance Sector Fee

The Health Insurance Sector Fee, sometimes referred to as the Health Insurance Tax (or HIT), originates from Title IX, Section 9010, of the Patient Protection and Affordable Care Act (PPACA). Title IX – the Revenue Provision – imposes fees on various sectors of the health industry (including health insurance companies) in order to recapture some of the benefits they receive as more Americans purchase health insurance. Revenues are also generated under this provision by the imposition of fees on certain pharmaceutical companies, medical devices and indoor tanning services. Proposed regulations implementing this provision of PPACA were published by the IRS on March 4, 2013 in the Federal Register.

With the Health Insurance Sector Fee, the government intends to collect $8 billion in 2014, $11.3 billion in 2015, $11.3 billion in 2016, $13.9 billion in 2017, and $14.3 billion in 2018. Beyond 2019, the total annual fee amount will increase in direct proportion to the growth in health insurance premiums. The fee will be divided among health insurance carriers based on each carrier’s share of the overall premium base, and will only be assessed relative to insured health plans, inclusive of medical, dental and vision plans. Self-insured health plans and associated stop-loss premium **will not be included** in the premium base.

Most health insurance carriers pass the cost of this fee on to fully insured group health plans in their rates. The cost impact is expected to be substantial (2.0 to 2.5% of premium beginning in 2014, increasing to 3.0 to 4.0% of premium in later years).

The PCOR Fee

Title VI of PPACA authorizes the establishment of the non-profit Patient-Centered Outcomes Research Institute (PCORI) in Sections 6301 and 6302. The purpose of the PCOR Institute is to assist patients, clinicians, purchasers, and policy-makers in making informed health decisions by producing and promoting high integrity, evidence-based information that comes from research guided by patients, caregivers and the broader health care community. The Institute is funded by the Treasury and a fee assessed on Medicare, private health insurance and self-insured group health plans. Final regulations implementing the PCORI and the associated fees were published by the IRS in the Federal Register on December 2, 2012.

The fee is assessed annually on group health plans ending after October 1, 2012 and before October 1, 2019 (i.e., seven full plan years). For calendar-year plans, the fee applies for plan years 2012 through 2018. Fully insured health plan carriers and sponsors of self-insured health plans pay the fee by filing Form 720, the Quarterly Excise Tax Return, with the IRS. The form is due to the IRS by July 31st of the year following the end of the plan year being assessed. The fee began as $2 per covered life and has increased to $2.27 per covered life in 2017.

Employers that do not file any other federal excise taxes using Form 720 need only to file once by July 31st. Employers required to file other quarterly federal excise taxes are only required to file for PCOR fees at the close of the second quarter. Line 133 requiring PCOR fee information may be left blank for first, third and fourth quarterly filings.

The Transitional Reinsurance Fee

Title I of PPACA establishes the transitional reinsurance program for the individual markets in each state. The reinsurance program is one of three mechanisms PPACA put in place to spread risk in the individual market and mitigate the potential impact of adverse selection. The other two are the risk corridor program and the risk adjustment program. Of the three, the transitional reinsurance program is most relevant to sponsors of group health plans. Beginning in 2014, every employer with a group health plan is required to pay a fee to fund the reinsurance program. Final regulations implementing the transitional reinsurance program were published on March 11, 2013.

This fee began as $63 per covered life in 2014, and decreased to $44 per covered life in 2015 and $27 per covered life in 2016. The fee is determined by the number of covered lives on a group health plan during a calendar year, including employees, spouses, dependents, and COBRA participants. Health insurance carriers and self-insured group health plans will report the annual enrollment for a group health plan to HHS by November 15th of each year through Pay.gov. The fee is then paid in single lump sum by the following January 15th, or in two installments – on or before January 15th and on or before November 15th.

The Cadillac Tax

PPACA created a 40% nondeductible excise tax on high-cost coverage that was originally scheduled to begin in 2018 (aka, the Cadillac Tax). The tax is to be imposed on the amount of applicable employer-sponsored coverage (fully insured, self-insured and grandfathered) exceeding high-cost thresholds estimated to be $10,200 per year for employee-only coverage and $27,500 per year for family coverage. Carriers will be responsible for paying the tax on fully insured group health plans, while the employer or plan administrator will be responsible for paying the tax imposed on self-insured group health plans.

The excise tax applies to "applicable employer-sponsored coverage," including coverage under a group health plan that is made available to an employee by an employer and that is either (a) excludable from gross income or (b) would be excludable if it was employer-provided coverage. Coverage subject to the tax includes the total cost of premium for a group major medical plan (COBRA rate if self-insured); employer and employee contributions to health flexible spending accounts (FSAs) and health savings accounts (HSAs); and health reimbursement accounts (HRAs). The cost of coverage for dental and vision plans are not included if provided under a separate policy, certificate, or contract. Other coverages not included are AD&D, long-term care, and supplemental insurance plans.

In December 2015, the Consolidated Appropriations Act passed by Congress delayed implementation of the Cadillac Tax until the 2020 tax year.

CONCLUSION

This white paper is meant to provide a general overview of some of the fees and taxes created by PPACA. The application of these fees and taxes to employer-sponsored group health plans, and the obligation to pay, can be complicated. Employers are encouraged to rely upon the advice of legal and tax advisors to determine the applicability of these laws and to assist with the compliance.