BCLP. Client Intelligent

BenefitsBCLP

CONSIDERING WHETHER TO PLAY OR PAY: TAKING INTO ACCOUNT PPACA'S NEW RESEARCH FEES

Aug 28, 2012

Now that the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act ("PPACA") has been upheld by the U.S. Supreme Court, employers need to consider whether to "play or pay". Among the many factors an employer should consider in making its determination are (1) the transitional reinsurance fee (which we will discuss in an upcoming post) and (2) the new annual fee intended to fund clinical effectiveness research.

Employers with fully insured plans should note that even though responsibility for reporting and paying the annual fee rests with the health insurance issuers, such expense will likely be passed along by the issuer to policyholders in the form of increased premiums.

Covered Plans

Employers who sponsor one or more of the following health plans on a self-funded basis will be subject to the annual fee based on the average number of covered lives:

- Major medical plans
- Retiree-only plans (even though such plans are not subject to PPACA mandates)
- Health reimbursement arrangements
- Health flexible spending accounts (unless an excepted benefit under HIPAA)
- Dental and vision plans (other than those offering limited scope dental or vision benefits, as determined under HIPAA)
- Employee assistance programs, disease-management programs, or wellness programs that provide significant benefits in the nature of medical care or treatment

A covered plan is considered self-funded if any portion of its coverage is provided through a means other than an insurance policy, including funding through a voluntary employees' beneficiary

association (VEBA).

More details on these exceptions are in our prior post on this topic here.

Annual Fee Amount

With respect to a self-funded covered plan, the plan sponsor must begin paying the fee for plan years ending after September 30, 2012. For calendar-year plans, this means the first payment for the plan year ending December 31, 2012 will be due July 31, 2013 (the fee is generally due by the end of July following the end of the applicable plan year). For the first year, the fee is $1 per covered life, increasing to $2 per covered life for the second year and thereafter indexed based on projected increases in per capita national health expenditures until the fee is phased out in 2019.

Average Covered Lives

Under the proposed regulations, the plan sponsor may calculate the average number of covered lives by using any of the following methods:

- *Actual Count*: Calculate the sum of the lives covered for each day of the plan year and divide by the number of days in the plan year.
- *Snapshot Date*: Add the total lives covered on a single date in each quarter (or more than one date, if an equal number of dates are used for each quarter) and divide by the total number of dates on which a count is made. The plan sponsor must use the same date(s) for each quarter. The number of covered lives can be determined by either (i) actually counting the number of lives or (ii) adding the sum of participants with self-only coverage to the number of participants with other than self-only coverage multiplied by 2.35.
- *Form 5500*: Add the total number of participants covered at the beginning of the plan year with the total number of participants covered at the end of the plan year based on information reported in the Form 5500. If the plan only offers self-only coverage, the sum can be divided by 2.

Special Rule for Multiple Plans: If the plan sponsor maintains multiple self-funded plans within the same plan year, it may treat such plans as a single plan so as to avoid double counting covered lives. However, insured and self-insured plans maintained by the same plan sponsor cannot be aggregated.

Special Rule for Health FSA and HRAs: If the plan sponsor maintains a health reimbursement arrangement or a health flexible spending account that is not an excepted benefit, the plan sponsor may count only each participant as a covered life (the plan sponsor does not have to take into account the participant's spouse or other dependents).

Plan sponsors must use the same method for the entire plan year but may use different calculation methods from plan year to plan year. However for the initial reporting year, the proposed regulations permit plan sponsors to use any reasonable method to determine the average number of covered lives.

Employers seeking to minimize the amount of the applicable fee should consider whether it is feasible to reduce the number of covered lives by amending the eligibility provisions of the plan.

Reporting Requirements

Although the fee is paid annually, plan sponsors are responsible for reporting the required fees using IRS Form 720, Quarterly Federal Excise Tax Return. In the case of a plan maintained by members of the same controlled group or affiliated service group, each participating employer is responsible for reporting and paying the required fee with respect to its own employees, unless the plan sponsor is designated in the plan documents (or a participating member is designated as the plan sponsor for the purposes of reporting and paying the fees) and such employer has consented to the designation.
