

## Prepare for Health Plan Participant Fee

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Attorney Articles

Under health care reform, plan sponsors of self-funded health plans and health insurance issuers will owe a new fee that is first payable for plan years ending after September 30, 2012. For calendar year plans this means the fee applies this year.

Many questions about the fee are currently unanswered, including when it must be paid. Proposed regulations are expected on this and other matters. In the meantime, [Notice 2011-35](#) provides information for plan sponsors and issuers to ensure they have properly budgeted for this expense.

### Q: Who will owe the fee?

A: The Patient Protection and Affordable Care Act ("PPACA") requires that the issuer of the policy pay the fee for fully insured accident or health coverage (including a fully insured group health plan) and that the plan sponsor pay the fee in the case of a self-funded accident or health plan.

### Q. We sponsor a self-funded group health plan. Will our third-party administrator ("TPA") pay the fee for us?

A: Although your TPA may agree to assist you in calculating and/or remitting payment (if permissible under anticipated guidance), the payment will be due from you.

### Q: When does the fee apply and how much is the fee?

A: The fee will be due for 7 years beginning in 2012 with the amount increasing over that time. The fee is \$1 times the average number of lives covered under the plan or policy for plan/policy years ending after September 30, 2012 and before October 1, 2013 (i.e., 2012 for calendar year plans) but increases to \$2 times the average number of covered lives for plan/policy years ending after September 30, 2013 and before October 1, 2014 (i.e., 2013 for calendar year plans). The fee for plan/policy years ending after September 30, 2014 (i.e., 2014 for calendar year plans) is adjusted for projected increases in national health expenditures. No fee is due for plan/policy years ending after September 30, 2019 (i.e., no fee is due for the 2019 plan year and beyond (for calendar year plans)). Below is a chart that lays out the fee schedule for calendar year plans.

Fee for Calendar Year Plans	
2012	\$1 x Average Number of Covered Lives
2013	\$2 x Average Number of Covered Lives
2014	\$2 x Inflation* x Average Number of Covered

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	Lives
2015	\$2 x Inflation* x Average Number of Covered Lives
2016	\$2 x Inflation* x Average Number of Covered Lives
2017	\$2 x Inflation* x Average Number of Covered Lives
2018	\$2 x Inflation* x Average Number of Covered Lives
2019 & beyond	No fee
* Fee is adjusted for projected increases in national health expenditures	

**Q. Who is included in determining the average number of covered lives?**

**A:** We are expecting guidance on how to determine the average number of covered lives but we know it includes all participants and beneficiaries (e.g., covered employees (regardless of whether full-time or part-time), covered retirees, covered spouses and covered dependents).

**Q. What type of plans are subject to the new fee?**

**A:** The fee applies to accident or health insurance policies and plans (including grandfathered plans) covering employees and retirees, except that it does not include excepted benefits for purposes of HIPAA portability rules (e.g., most health FSAs, certain dental and vision plans, specified illness coverage, and coverage only for accidents). We are expecting guidance that may provide exceptions for health FSAs that are not excepted benefits and for health reimbursement arrangements. Comments submitted in response to Notice 2011-35 have requested that retiree-only coverage, COBRA coverage and expatriate coverage also not be subject to the fee.

**Q. If the same participant is covered by two group health plans that are not excepted benefits, do we have to pay the fee for that participant for each plan?**

**A:** We are hoping to get guidance that will permit plan sponsors to count each participant once, regardless of how many plans under which the participant is covered. If we do not receive such guidance, it appears that a plan sponsor could bundle accident and group health plans into one comprehensive or “wrap” plan so that participants are counted only once in determining this fee.

**Q. When do we pay the fee?**

**A:** We do not know when fees will be due each year. Future proposed regulations may provide for annual, rather than quarterly, payment and may require payment on a specified date each year regardless of the plan/policy year.

**Q: What is the purpose of the fee?**

**A:** PPACA created this new fee to fund a nonprofit corporation, the Patient-Centered Outcomes Research Institute (“PCORI”), that was created by PPACA. PCORI was established to research the risks and benefits of various medical procedures and drugs and to review ways to diagnose, treat and prevent illness.

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