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health care reform alert

December 6, 2012

IRS Issues Final Regulations on Comparative Effectiveness Research Fee

On December 5, 2012, the Internal Revenue Service (IRS) issued final regulations on the Comparative Effectiveness Research Fee (CERF). This is a Final Rule, so there is no comment period.

CERF is an annual fee on insured and self-insured health plans that will be used to fund the Patient Centered Outcomes Research Institute (PCORI), which will conduct research designed to determine which of two or more treatments works best when applied to actual patients.

The fee applies for plan years beginning on or after 10/2/11 and continues through 2019. Insurers pay the fee for insured plans and employers pay the fee for self-insured plans. The first payments are due for some plans on 7/31/13. The annual fee begins at \$1 per participant and will increase in future years.

The final regulations included the following changes and clarifications:

- The fee does not apply to an insurance policy providing for an employee assistance plan, disease management or wellness program as long as it does not provide significant benefits in the nature of medical care/treatment.
- The fee applies to individuals on a temporary U.S. Visa who live in the U.S.
- The fee does not apply to U.S.-based "trailing dependents" of expatriate employees who live overseas.
- An employer sponsoring a plan with self-insured and insured coverage options can disregard individuals covered under the insured option. The insurer will pay the fee for the insured participants.
- The third-party administrator or carrier is NOT allowed to pay or calculate the fee for self-insured plans.
- Since Health Reimbursement Accounts (HRAs) and Flexible Spending Accounts (FSAs) are considered self-funded plans, employers are required to pay any tax applicable to HRAs and FSAs that are not "excepted benefits" even if their HRA or FSA is offered with an insured group health plan. (Note: Multiple self-insured plans with the same plan year can be treated as a single self-insured plan so that only one assessment applies.)