
FEHB Program Carrier Letter

All FEHB Carriers

U.S. Office of Personnel Management
Healthcare and Insurance

Letter No. 2013-16

Date: June 7, 2013

Fee-for-Service [12] Experience-rated HMO [12] Community-rated [14]

SUBJECT: Patient-Centered Outcomes Research Institute (PCORI) and HRA Fee

This carrier letter revises and supersedes FEHB Carrier Letter No. 2013-03 dated March 11, 2013, regarding the Affordable Care Act's Patient-Centered Outcomes Research Institute (PCORI) fee for policy years ending on or after October 1, 2012 and before October 1, 2019.

The PCORI fee is assessed on an issuer of a "specified health insurance policy" under Internal Revenue Code (IRC) § 4375, and on a plan sponsor of an "applicable self-insured health plan" under IRC § 4376. On December 6, 2012, the Internal Revenue Service (IRS) published final regulations that provide guidance on calculation and payment of the fee at 77 FR 72721 (available at <http://www.gpo.gov/fdsys/granule/FR-2012-12-06/2012-29325/content-detail.html>).

In Carrier Letter No. 2013-03, OPM indicated that we expected FEHB carriers to assess PCORI liability as issuers of a "specified health insurance policy" under IRC § 4375 and 26 CFR § 46.4375-1 on behalf of their FEHB membership. While we continue to expect all carriers to pay the PCORI fee on behalf of their FEHB membership, we are modifying our guidance regarding the appropriate statutory basis for payment by carriers of certain employee organization plans.

For purposes of the FEHB Program, all carriers offer a health benefits plan for which the carrier and not the Federal Government bears the risk of claims. Specifically, OPM enters into contracts with carriers that offer health benefits plans described at 5 U.S.C. § 8903 or § 8903a. By entering into a contract with OPM, each carrier agrees to bear the cost of benefits offered under FEHB health benefit plans. All such FEHB plans are fully insured. In this sense, no FEHB plan is "self-insured" by the Federal Government.

Some carriers believe that the FEHB plans they offer are more appropriately treated as an "applicable self-insured health plan" under IRC § 4376, and that the employee organization is the "plan sponsor" responsible for paying the PCORI fee with respect to the plan. As the Internal Revenue Service (IRS) is responsible for administering and interpreting the IRC, we believe the IRS is the appropriate agency to offer guidance on the meaning of terms used in the PCORI rule, including what is meant by the term "applicable self-insured health plan." We recognize that the definitions and terms used in the FEHB Program context may differ from the definitions and terms used in other statutes, such as the Internal Revenue Code (IRC).

As a result, we are withdrawing our statement to the effect that we expect carriers of employee organization plans to file under § 4375 and instead we defer to carriers as to their filing status. Regardless of whether the carrier files under § 4375 or § 4376, the fee is an allowable cost under the FEHB contract.

Employee Organization Plans with HRA Must Notify OPM of IRC §4375 or §4376 Filing Status
Each FEHB employee organization plan with an HRA component must communicate its filing status to OPM for purposes of determining whether an additional fee will be due with regard to the HRA component of that plan.

If your employee organization plan has an HRA and you determine that you will file under § 4375 as an issuer of an insurance policy, OPM will file a Form 720 with respect to the HRA component of the plan. OPM will issue further guidance on how the Form will be completed and how payment of the fee will be facilitated with respect to the HRA component of the plan.

If your employee organization plan has an HRA and you determine that you will file under § 4376 as the plan sponsor of an applicable self-insured health plan, then the plan and HRA component are aggregated under the "single plan rule" and no additional filing or fee will be due.

We appreciate your comments and look forward to continued dialogue regarding OPM's implementation of ACA as it applies to the unique circumstances governing FEHB carriers. Carriers should also review the IRS final rules and other applicable guidance on this provision available at <http://www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions>.

Questions

If you have any questions regarding this Carrier Letter please contact Wen Fu at Wenqiong.Fu@opm.gov or Rachel Royster at Rachel.Royster@opm.gov or (202)-606-0004.

Sincerely,

John O'Brien
Director
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