ACA OVERVIEW

Provided by:
Mosaic Employee Benefits

This ACA Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

Taxes and Fees under the Affordable Care Act

HIGHLIGHTS

- The Affordable Care Act created several taxes and fees that affect health plans and health plan sponsors.
- Key tax provisions include the individual and employer shared responsibility rules and the excise tax on high-cost health coverage (known as the "Cadillac Tax").
- ACA fees include the PCORI fee and health insurance providers fee.

The Affordable Care Act (ACA) has made significant changes to the U.S. health care system, including adding coverage requirements, patient protections and cost limitations. These changes affect health care providers, government programs, health insurance issuers, employers and plan sponsors, and individuals. In order to fund these changes, the ACA imposes several taxes and fees—many of which directly impact health plans and health plan sponsors.

This ACA Overview includes a series of charts to provide a summary of many of the ACA's tax and fee provisions that affect health plans. The taxes and fees summarized in this document include:

- **Taxes**: the increased tax on HSA and Archer MSA withdrawals; the additional Medicare tax for high-wage workers; the individual mandate; the employer shared responsibility rules; and the Cadillac tax.
- **Fees**: the PCORI fee; and the health insurance providers fee.

The ACA also establishes several other taxes that do not affect health plans, which are not included in this ACA Overview. Please contact Mosaic Employee Benefits if you need more information on any of the taxes or fees included in this document or other ACA tax or fee provisions.

LINKS AND RESOURCES

- The IRS has provided some information on select tax issues for individuals and employers on its website: ACA Tax Provisions
- The tax reform bill, the Tax Cuts and Jobs Act, reduces the ACA's individual mandate penalty to zero, effective in 2019
- A continuing resolution delayed the Cadillac Tax until 2022 and provided a one-year moratorium for 2019 on the health insurance providers fee

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TAX PROVISIONS

PROVISION	APPLIES TO	EFFECTIVE DATE	SUMMARY
Increased Tax on HSA and Archer MSA Withdrawals	Withdrawals prior to age 65 that are not used for qualified medical expenses	Distributions after Dec. 31, 2010	The ACA increased the additional tax on HSA withdrawals prior to age 65 that are not used for qualified medical expenses from 10 to 20 percent. The additional tax for Archer MSA withdrawals not used for qualified medical expenses also increased from 15 to 20 percent.
Additional Medicare Tax for High-wage Workers	Employees who earn wages in excess of $200,000 in a year	Taxable years beginning in 2013	The ACA increases the Medicare hospital insurance tax rate by 0.9 percentage points for high-income individuals. Employers must withhold the additional taxes on wages paid in excess of $200,000.
Individual Shared Responsibility (Individual Mandate)	All individuals who do not qualify for a specific exemption (including children)	Jan. 1, 2014 **Penalties reduced to zero, effective in 2019**	The ACA requires most individuals to obtain acceptable health insurance coverage or pay a tax penalty. Individuals may be eligible for an exemption from the penalty in certain circumstances, including if they cannot obtain affordable coverage.
Employer Shared Responsibility (Pay or Play Rules)	Applicable large employers (ALEs) that employ, on average, at least 50 full-time employees, including FTEs, on business days during the preceding calendar year (including for-profit, nonprofit and government employers)	Jan. 1, 2015	ALEs may be subject to penalties if they do not provide health coverage to full-time employees (and dependents), or if the coverage they provide is not affordable or does not provide minimum value. A full-time employee is an employee who was employed on average at least 30 hours of service per week.
High Cost Plan Excise Tax (Cadillac Tax)	Coverage providers of high-cost group health coverage (which can be the insurer, the employer or a third-party administrator)	**Delayed until Jan. 1, 2022**	A 40 percent excise tax is to be imposed on the excess benefit of high-cost employer-sponsored health insurance. The annual limit for purposes of calculating the excess benefits is currently $10,200 for individuals and $27,500 for other than individual coverage. The effective date of this tax has been delayed until 2022.

The ACA also establishes several other taxes that do not affect health plans, including the Indoor Tanning Services Tax and the Medical Devices Excise Tax.

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FEES

PROVISION	APPLIES TO	EFFECTIVE DATE	SUMMARY
Patient-centered Outcomes Research Institute (PCORI) Fee	Health insurance issuers and sponsors of self-insured health plans	Plan years ending on or after Oct. 1, 2012, and before Oct. 1, 2019	The ACA imposes fees to fund health care research through the Patient-centered Outcomes Research Institute. The fee is $2.39 per covered life for plan years ending on or after Oct. 1, 2017, and before Oct. 1, 2018 (and is adjusted annually for later plan years).
Health Insurance Providers Fee	Any entity that provides health insurance for any U.S. health risk, including: • Health insurers • HMOs • MEWAs • Providers of Medicare Advantage, Medicare Part D prescription drug coverage or Medicaid coverage The fee does not apply to companies whose net premiums written are $25 million or less	Paid by Sept. 30 of each calendar year, beginning in 2014 **Suspended for 2017 and 2019 (but continues to be effective in 2018)**	The ACA imposes an annual, non-deductible fee on the health insurance sector, allocated according to market share. The fee is assessed on health insurers' premium revenue with respect to health insurance above $25 million. The aggregate annual fee for all covered entities is expected to be: • $8 billion in 2014 • $11.3 billion in 2015 and 2016 • $13.9 billion in 2017 • $14.3 billion in 2018 • Beginning in 2019, the cost of the fee will increase based on the rate of premium growth.

The ACA also imposed a reinsurance fee on health insurance issuers and sponsors of self-insured group health plans to help fund the transitional reinsurance program. The reinsurance fee applied for the 2014-2016 calendar years only. **Therefore, this fee has expired, and no reinsurance fees are due for the 2017 calendar year and beyond.**

Paying PCORI Fees Using Plan Assets

The Department of Labor (DOL) generally considers all amounts that a participant pays to or has withheld by an employer for purposes of obtaining benefits under a plan as plan assets. If an employer holds plan assets, plan fiduciaries are obligated under ERISA to treat those assets as any other assets of the plan, which includes ensuring compliance with applicable trust and reporting and disclosure requirements of ERISA. The DOL has provided a safe harbor from being

considered to hold plan assets (and a related exemption from the associated trust and reporting requirements) for insured employer plans where employee contributions are forwarded to a carrier for purposes of paying premiums.

The DOL has advised that, because the PCORI fees are imposed on the plan sponsor under ACA, it is generally not permissible to pay the fees from plan assets under ERISA, although special circumstances may exist in limited situations. On Jan. 24, 2013, the DOL issued a set of frequently asked questions (FAQs) regarding ACA implementation that include a limited exception allowing multiemployer plans to use plan assets to pay PCORI fees (unless the plan document specifies another source of payment for the fees).

PROVISION	CAN THE FEE BE PAID USING PLAN ASSETS?	CAN THE FEE BE PASSED ALONG TO PARTICIPANTS?
PCORI Fee	**Single-employer plan**: The PCORI fee generally may not be paid with plan assets. This fee is a tax assessed against the plan sponsor itself. **Multiemployer plan**: An FAQ (Q8) created a special exception for multiemployer plans. Multiemployer plan assets may be used to pay the PCORI fees since the plan sponsor liable for a multiemployer plan's fee is generally an independent joint board of trustees with no source of funding other than plan assets. There also may be rare circumstances where sponsors of employee benefit plans that are not multiemployer plans would also be able to use plan assets to pay the PCORI fee, such as a VEBA that provides retiree-only health benefits where the sponsor is a trustee or board of trustees that exists solely for the purpose of sponsoring and administering the plan and that has no source of funding independent of plan assets. However, other plan sponsors required to pay the PCORI fee may not use plan assets to pay the fee even if the plan uses a VEBA trust to pay benefits under the plan.	**By issuer**: Nothing in the Internal Revenue Code or regulations prevents an issuer from recovering the PCORI fee through increases in premiums. **By self-funded plan**: In cases where the PCORI fee cannot be paid from plan assets, it may still be possible to pass the fee along to participants, but that repayment would need to be properly structured. If the plan is subject to ERISA, it will need to use caution to avoid paying the fee using plan assets (for example, salary reduction contributions).