
FEHB Program Carrier Letter

All FEHB Carriers

U.S. Office of Personnel Management
Healthcare and Insurance

Letter No. 2013-03

Date: March 11, 2013

Fee-for-Service [3] Experience-rated HMO [3] Community-rated [2]

SUBJECT: Patient-Centered Outcomes Research Institute Fee

Section 6301 of the Patient Protection and Affordable Care Act, Public Law 111–148, as amended by the Health Care and Education Reconciliation Act, Public Law 111–152, (the Affordable Care Act) imposes a new Patient-Centered Outcomes Research Institute (PCORI) fee on issuers of individual and group health insurance policies for policy years ending on or after October 1, 2012 and before October 1, 2019. 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>).

For the Federal Employees Health Benefits (FEHB) Program the fee applied for the first time for plan year (for the FEHB Program this is also calendar year) 2012. On October 7, 2011, the Office of Personnel Management (OPM) notified FEHB carriers, via a *listserv*, that OPM anticipated FEHB carriers would be required to pay the fee based on FEHB Program membership for all plan years subject to the fee. The *listserv* also indicated that the fee would be treated as an administrative expense under Section 3.2 of the FEHB Program contract, meaning it is an allowable cost for experience-rated carriers.

This carrier letter confirms that this fee is an allowable cost chargeable to the contract for experience-rated carriers and provides guidance for FEHB carriers on payment of the PCORI fee.

If a community rated carrier’s rating methodology includes adding a load for the PCORI fee, the carrier is allowed to include this fee in the rate build up for FEHB in accordance with the methodology. If a carrier does not load the rate for other groups subject to the fee, the carrier cannot load the FEHB rate.

Payment of the Fee under Code Section 4375

Section 4375 of title 26, United States Code (U.S.C.), imposes the fee on an issuer of a “specified health insurance policy,” which means any accident or health insurance policy (broadly defined to include any instrument whereby a contract of insurance is issued, renewed, or extended, including a policy under a group health plan) that is issued with respect to individuals residing in the United States. FEHB plans are not included among the types of governmental plans that are exempt from payment of the fee. Accordingly, OPM expects FEHB carriers to assess their tax liability as “issuers” under 26 U.S.C. § 4375 and 26 CFR 46.4375-1 and comply with payment of the fee on behalf of their FEHB membership.

Please note that the term “issuer” is not defined for purposes of this Internal Revenue Code section and therefore, does not mean a “health insurance issuer” or “issuer” for purposes of title XXVII of the Public Health Service Act (PHSA), see 42 U.S.C. § 300gg-2791(b).

Plans may use any IRS-approved method of calculating the average number of lives covered under a policy in accordance with this section.

Health Reimbursement Arrangements

The final regulation does not include Health Reimbursement Arrangements (HRAs) as excepted benefits exempt from payment of the fee. We will be reaching out to carriers with plans that include HRAs to coordinate payment of the PCORI fee.

We encourage plans to review the IRS final rules and other applicable guidance on this provision available at <http://www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions>.

If you have any questions you may contact Marguerite Martel, Senior Policy Analyst, Planning and Policy Analysis, at marguerite.martel@opm.gov or at 202-606-0004.

Sincerely

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Director
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