

C.M. SMITH AGENCY, INC.

SEPTEMBER 2011 GET THE *FACTS!*

ACA'S COMPARATIVE EFFECTIVENESS FEE

COMPARATIVE EFFECTIVENESS RESEARCH FEES

One of the new taxes added by the Affordable Care Act is known as the Comparative Effectiveness Research Fee (the "Fee"), which will be used to research, evaluate and compare health outcomes and the clinical effectiveness of medical treatments, including protocols for treatment, care management, and other strategies or items being used in the treatment, management, and diagnosis/prevention of illness or injury.

EFFECTIVE DATE

The Fee is effective for years 2012 through 2018 with respect to plans that operate on a calendar-year basis. For non-calendar year plans, the fee applies to the first plan year that ends on or after October 1, 2011, and is not expected to apply to plan years ending after September 30, 2019. Therefore, although not entirely clear from the available guidance, it appears that the Fee applies to plan years beginning on or after November 1, 2011.

COVERED PLANS

Generally, all group health plans that cover U.S. residents are subject to the Fee, except for benefits that are "excepted benefits" under the Health Insurance Portability and Accountability Act ("HIPAA"). "Excepted benefits" include dental and vision plans that are issued under a separate contract of insurance from the group health plan. With respect to dental and vision plans that are self-

funded, such benefits are HIPAA-excepted (1) if they may be elected separately from the group health plan, and (2) if so elected, participants must pay an additional premium for the coverage.

PAYMENT OF THE FEE

The Fee is \$1 per member (i.e., per covered individual) per year for plan years ending before October 1, 2013.

Thereafter, the Fee is \$2 per member per year, and is subject to increase based on national health expenditures starting with plan years beginning after September 30, 2014. With respect to fully insured group health plans, the Fee will be paid by the applicable insurance company. With respect to self-funded group health plans, the plan sponsor is responsible for payment.

OPEN ITEMS

- It is unknown whether self-funded plans will be permitted to use participant contributions to offset a portion of the Fee, or whether insurance carriers will be permitted to include the Fee in the premiums they charge to employers.

- The frequency with which the Fee must be reported and collected has not yet been determined (e.g., will it be collected annually or quarterly, and will reporting be based on plan year or calendar year).

- It is unknown whether the Fee will apply to Health Reimbursement Arrangements ("HRA") or "retiree-only" plans (while generally retiree-only plans are exempt from the Affordable Care Act's coverage

C.M. SMITH AGENCY, INC.

and underwriting mandates, there does not appear to be a blanket exemption from the Fee for retiree-only plans). The Internal Revenue Service ("IRS) is currently accepting comments from interested parties as to whether the Fee should apply to HRAs.

- The extent to which third-party administrators may assist plan sponsors with reporting and collection of the Fee has not yet been determined.

Proskauer >>

This update is brought to you by C.M. Smith Agency, Inc.

This legal information is provided by **PROSKAUER ROSE LLP**. For more information about Proskauer Rose, please contact our lawyer, Peter Marathas, at (617) 526-9704. This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.