



Key ACA Taxes Repealed, but the PCOR Fee Is Back

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In a bipartisan effort, the U.S. Congress agreed on a spending package to fund the federal government which included important changes to federal laws affecting employer-sponsored group health and welfare benefit plans. The legislation was signed into law by the President on December 20, 2019.

The law repeals the following taxes under the Affordable Care Act (“ACA”):

- 40% tax on high cost health plans (a.k.a., the “Cadillac Plan Tax”) after December 31, 2019.
- 2.3% medical device tax on sales after December 31, 2019.
- Annual Health Insurer Tax (“HIT”) for calendar years beginning after December 31, 2020.

In an interesting turn of events, the new law reinstates the Patient-Centered Outcomes Research (PCOR) fee through September 30, 2029 for insured and self-funded health plans. Prior to enactment of this new law, many plans had paid their final PCOR fee as July 31, 2019 or were scheduled to pay their final assessment on July 31, 2020. With reinstatement of the fee, insured and self-funded plans will continue with these payments into 2029 and (in some cases) 2030. More guidance will be issued from the IRS as to future PCOR fee amounts and process.

The following chart illustrates the upcoming PCOR fee payments and deadlines.

Plan Year	Amount of PCOR Fee	Payment and Filing Date
February 1, 2018 – January 31, 2019	\$2.45/covered life/year	July 31, 2020
March 1, 2018 – February 28, 2019	\$2.45/covered life/year	July 31, 2020
April 1, 2018 – March 31, 2019	\$2.45/covered life/year	July 31, 2020
May 1, 2018 – April 30, 2019	\$2.45/covered life/year	July 31, 2020
June 1, 2018 – May 31, 2019	\$2.45/covered life/year	July 31, 2020
July 1, 2018 – June 30, 2019	\$2.45/covered life/year	July 31, 2020
August 1, 2018 – July 31, 2019	\$2.45/covered life/year	July 31, 2020
September 1, 2018 – August 31, 2019	\$2.45/covered life/year	July 31, 2020
October 1, 2018 – September 30, 2019	\$2.45/covered life/year	July 31, 2020
November 1, 2018 – October 31, 2019	TBA/covered life/year	July 31, 2020
December 1, 2018 – November 30, 2019	TBA/covered life/year	July 31, 2020
January 1, 2019 – December 31, 2019	TBA/covered life/year	July 31, 2020

The new law does not address “surprise billing,” which can occur when healthcare services are provided by out-of-network doctors or specialists working at an in-network facility. The new law also does not address prescription drug pricing or health cost transparency. Congress may revisit these issues in 2020.

■ Employer Action

- Employers can breathe a sigh of relief as the Cadillac Plan Tax will no longer take effect on January 1, 2022. The repeal of the medical device tax and HIT tax will also provide some cost relief to employer sponsored plans.
- With the PCOR fee reinstated for ten more years, employers should continue to prepare for compliance. While insurance carriers will pay the fee for fully insured plans, employers are responsible for paying the PCOR fee for self-funded health plans, including health reimbursement arrangements (“HRAs”).
- It is expected that employers sponsoring self-funded health plans (including HRAs) will continue to use IRS Form 720 to file and pay the PCOR fee with an expected due date of July 31 of the calendar year immediately following the last day of the plan year.
- The IRS is expected to issue an inflation adjusted amount to use for the next reporting period.