

Sections 4375 & 4376 – Insured and Self-Insured Health Plans

Adjusted Applicable Dollar Amount for Fee Imposed by §§ 4375 and 4376

Notice 2020-44

I. PURPOSE

This notice provides the adjusted applicable dollar amount to be multiplied by the average number of covered lives for purposes of calculating the fee imposed by §§ 4375 and 4376 of the Internal Revenue Code for policy years and plan years that end on or after October 1, 2019, and before October 1, 2020. This notice also provides transition relief for calculating the average number of covered lives as part of calculating the applicable fee for policy years and plan years that end on or after October 1, 2019, and before October 1, 2020.

II. BACKGROUND

Prior to the December 20, 2019 enactment of the Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, 133 Stat. 2534 (the Act), § 4375 imposed a fee on the issuer of a specified health insurance policy for each policy year ending after September 30, 2012, and before October 1, 2019, and § 4376 imposed a fee on the plan sponsor of an applicable self-insured health plan for each plan year ending after September 30, 2012, and before October 1, 2019. The fee imposed by §§ 4375 and 4376 helps to fund the Patient-Centered Outcomes Research Trust Fund (PCORTF) and is calculated using the average number of lives covered under the policy or plan and the applicable dollar amount for that policy year or plan year. The Act extended the termination dates to provide that §§ 4375 and 4376 will not apply to policy

and plan years ending after September 30, 2029, rather than policy and plan years ending after September 30, 2019.

Under §§ 4375(a) and 4376(a), the applicable dollar amount is \$2 for policy and plan years ending on or after October 1, 2013, and before October 1, 2014.¹

Treas. Reg. §§ 46.4375-1(c)(4) and 46.4376-1(c)(3). Under §§ 4375(d) and 4376(d) and Treas. Reg. §§ 46.4375-1(c)(4) and 46.4376-1(c)(3), the applicable dollar amount for policy years and plan years ending in any Federal fiscal year beginning on or after October 1, 2014, is increased based on increases in the projected per capita amount of National Health Expenditures. Specifically, the applicable dollar amount is the sum of –

- (i) The applicable dollar amount for the policy year or plan year ending in the previous Federal fiscal year; plus
- (ii) The amount equal to the product of –
 - (A) The applicable dollar amount for the policy year or plan year ending in the previous Federal fiscal year; and
 - (B) The percentage increase in the projected per capita amount of the National Health Expenditures most recently released by the Department of Health and Human Services (HHS) before the beginning of the Federal fiscal year.

Notice 2018-85, 2018-48, I.R.B. 788, provides that the adjusted applicable dollar amount for policy years and plan years that end on or after October 1, 2018, and before October 1, 2019, is \$2.45.

¹ The applicable dollar amount is \$1 for policy and plan years ending before October 1, 2013.

The Act amended §§ 4375(e) and 4376(e) to provide that §§ 4375 and 4376 will no longer apply beginning with policy and plan years ending after September 30, 2029. Therefore, the fee under §§ 4375 and 4376 applies to any specified health insurance policy and any applicable self-insured health plan with a policy or plan year ending after September 30, 2012, and before September 30, 2029, including any policy or plan year ending after September 30, 2019. The Department of the Treasury and the IRS anticipate amending the regulations at §§ 46.4375-1, 46.4376-1, and 46.4377-1 to reflect the statutory change in the termination dates.

III. TRANSITION RELIEF

Prior to enactment of the Act, due to the anticipated termination of the fee under § 4375 for policy years ending after September 30, 2019, issuers of specified health insurance policies for policy years ending on or after October 1, 2019, and before October 1, 2020, may not have anticipated the need to identify the number of covered lives for this period. Issuers may continue to use one of the following four methods specified in the regulations under § 4375 to calculate the average number of covered lives for purposes of the fee imposed by § 4375: the actual count method, the snapshot method, the member months method, and the state form method. See Treas. Reg. § 46.4375-1(c)(2)(i). In addition, for policy years ending on or after October 1, 2019, and before October 1, 2020, issuers may use any reasonable method for calculating the average number of covered lives. If an issuer uses a reasonable method to calculate the average number of covered lives for policy years ending on or after October 1, 2019, and before October 1, 2020, then that reasonable method must be applied

consistently for the duration of the year and the issuer must use the same method for all policies for which a liability is reported on Form 720 for that year.

Similarly, prior to enactment of the Act, due to the anticipated termination of the fee under § 4376 for plan years ending after September 30, 2019, plan sponsors of applicable self-insured health plans for plan years ending on or after October 1, 2019, and before October 1, 2020, may not have anticipated the need to identify the number of covered lives for this period. Plan sponsors may continue to use one of the following three methods specified in the regulations under § 4376 to calculate the average number of covered lives for purposes of the fee imposed by § 4376: the actual count method, the snapshot method, and the Form 5500 method. See Treas. Reg. § 46.4376-1(c)(2)(i). In addition, for plan years ending on or after October 1, 2019, and before October 1, 2020, plan sponsors may use any reasonable method for calculating the average number of covered lives. If a plan sponsor uses a reasonable method to calculate the average number of covered lives for plan years ending on or after October 1, 2019, and before October 1, 2020, then that reasonable method must be applied consistently for the duration of the plan year.

IV. ADJUSTED APPLICABLE DOLLAR AMOUNT

The applicable dollar amount that must be used to calculate the fee imposed by §§ 4375 and 4376 for policy years and plan years that end on or after October 1, 2019, and before October 1, 2020, is \$2.54. The increase from the prior amount is calculated by multiplying the adjusted applicable dollar amount for policy years and plan years ending in the previous Federal fiscal year, \$2.45, by the percentage increase of the projected per capita amount of National Health Expenditures published by HHS on

February 19, 2019. See: <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsProjected>, Table 3. The percentage increase is calculated after adjustment to reflect updates to the data used to calculate the prior amount, \$2.45, which was based on the per capita amounts of National Health Expenditures for 2018 and 2019 published by HHS on February 14, 2018.

V. EFFECTIVE DATE

This notice is effective for policy years and plan years ending on or after October 1, 2019.

VI. DRAFTING INFORMATION

The principal author of this notice is William Fischer of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, contact Mr. Fischer at (202) 317-5500 (not a toll-free call).