

## Reg. Section 46.4376-1(b)(1)(ii)(A)

### Fee on sponsors of self-insured health plans

(a) In general.

(1) General rule. A plan sponsor of an applicable self-insured health plan is liable for a fee imposed by section 4376 for plans with plan years ending on or after October 1, 2012, and before October 1, 2019. Paragraph (b) of this section provides the definitions that apply for purposes of section 4376 and this section. Paragraph (c) of this section provides the requirements for calculating the fee imposed by section 4376. Paragraph (d) of this section provides the applicability date. For rules relating to filing the required return and paying the fee, see §§40.6011(a)-1 and 40.6071(a)-1.

(2) [Reserved]

(b) Definitions. The following definitions apply for purposes of section 4376 and this section. See §46.4377-1 for additional definitions.

(1) Applicable self-insured health plan.

(i) In general. Except as provided in paragraph (b)(1)(ii) of this section and §46.4377-1, applicable self-insured health plan means a plan that provides for accident and health coverage (within the meaning of §46.4377-1(a)) if any portion of the coverage is provided other than through an insurance policy and the plan is established or maintained-

(A) By one or more employers for the benefit of their employees or former employees;

(B) By one or more employee organizations for the benefit of their members or former members;

(C) Jointly by one or more employers and one or more employee organizations for the benefit of employees or former employees;

(D) By a voluntary employees' beneficiary association, as described in section 501(c)(9);

(E) By an organization described in section 501(c)(6); or

(F) By a multiple employer welfare arrangement (as defined in section 3(40) of the Employee Retirement Income Security Act of 1974 (ERISA)), a rural electric cooperative (as defined in section 3(40)(B)(iv) of ERISA), or a rural cooperative association (as defined in section 3(40)(B)(v) of ERISA).

(ii) Exceptions. The term applicable self-insured health plan does not include any of the following:

(A) A plan that provides benefits substantially all of which are excepted benefits, as defined in section 9832(c). For example, a health flexible



spending arrangement (health FSA) (as described in section 106(c)(2)) that satisfies the requirements to be treated as an excepted benefit under section 9832(c) and §54.9831-1(c)(3)(v) of this chapter is not an applicable self-insured health plan. A health FSA that is not treated as an excepted benefit under section 9832(c) and §54.9831-1(c)(3)(v) is an applicable self-insured health plan.

(B) An employee assistance program, disease management program, or wellness program if the program does not provide significant benefits in the nature of medical care or treatment.

(C) A plan that, as demonstrated by the facts and circumstances surrounding the adoption and operation of the plan, was designed specifically to cover primarily employees who are working and residing outside the United States (as defined in §46.4377-1(a)(3)).

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