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Public Goods Pool Surcharge

New York's Health Care Reform Act (HCRA) requires health plans to pay a **surcharge on certain health care services** provided to plan participants within the state of New York. Health plans in New York also must pay a surcharge based on the number of people they cover, or a **covered lives surcharge**.

These surcharges, which have been in effect since the mid-1990's, are paid to the New York **Public Goods Pool** to subsidize a variety of health care initiatives within the state.

AFFECTED HEALTH PLANS

In general, all health plans—both insured and self-funded—are required to pay the surcharges on health care services and covered lives. A third-party administrator (TPA) can make the surcharge payments on behalf of a self-funded health plan.

Health flexible spending accounts (FSAs), health reimbursement arrangements (HRAs) and health savings accounts (HSAs) are not directly subject to the Public Goods Pool surcharges.

TYPES OF SURCHARGES

The New York Public Goods Pool surcharge tax is made up of two components:



The first component is a surcharge tax on the dollar value of claims incurred in the state of New York.

The second component is a covered lives fee that is based on the number of covered employees residing in the state of New York. This part of the tax varies by the region of New York that the employee resides in and whether they have single or family coverage.

Health Care Services Surcharge

Health insurance issuers and self-funded health plans are required to pay a surcharge on all inpatient and outpatient hospital care and services rendered at diagnostic and treatment centers.

The patient services that are subject to the surcharge broadly include the following health care services provided by hospitals or diagnostic and treatment centers:

- Inpatient hospital services;
- Outpatient services (including ambulatory services);
- Emergency medical services;

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. It broadly summarizes state statutes and regulations generally applicable to private employers, but does not include references to other legal resources unless specifically noted. Readers should contact legal counsel for legal advice.

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- Ambulatory surgical services;
- Other hospital and health-related services;
- All services provided by diagnostic and treatment centers providing a comprehensive range of primary health care services; and
- All ambulatory surgical services provided by diagnostic and treatment centers providing ambulatory surgical services.

The surcharge does NOT apply to these services:

- Services provided to Medicare beneficiaries;
- Residential health care facility services, adult day care services, hospice services and home care services;
- Physician practice or faculty practice plan discrete billings for physician services;
- Ambulatory clinical laboratory visits or services; and
- Services provided to subscribers of an HMO in situations where the HMO operates the diagnostic or treatment clinic providing the service.

Covered Lives Surcharge

The covered lives surcharge is an annual flat tax on all privately insured individuals in the state of New York. Employer-sponsored health plans must pay the tax for each employee who has coverage for inpatient hospital services on an expense incurred basis. Health plans are not required to pay the surcharge for individuals who are entitled to Medicare.

AMOUNT OF SURCHARGE

Issuers and self-funded plans have two options for paying the surcharges—(1) they can register and make regular payments to the Public Goods Pool or (2) they can choose not to register and make payments directly to providers.

If the health care services surcharge is paid directly to providers, an additional tax is assessed.

Health Care Services Surcharge

The surcharge for registered payors is **9.63 percent** of the total claims paid.

The surcharge for unregistered payors is **37.9 percent** (9.63 percent plus an additional tax of 28.27 percent) of the total claim paid to the provider.

Covered Lives Surcharge

The amount of the covered lives surcharge varies based on two factors:

1. The **region of the state** where the employee resides; and
2. Whether the employee has **individual or family coverage**.

The New York Department of Health's website includes a [chart](#) of the regional covered lives assessment rates.

For example, for 2016, in the New York City region (covering Bronx, Kings, New York, Queens and Richmond counties), the annual assessment is \$202.82 for employees with individual coverage and

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\$669.30 for employees with family coverage. For the Long Island region (Nassau and Suffolk counties) these amounts are \$67.43 and \$222.53, respectively.

PAYMENT PROCESS

If an issuer or self-funded health plan registers with the Public Goods Pool, the payor must indicate to the health care provider that they are a registered participant at the time of service. The provider must confirm the payer's registration via the state [website](#). Once the payor is confirmed as registered, the provider will NOT add any surcharge to the bill.

Registered payors are required to pay the surcharge amount directly to the state of New York on a monthly basis, as indicated in this chart.

Covered Period	Due Date	Covered Period	Due Date
January 2016	March 1, 2016	July 2016	Aug. 30, 2016
February 2016	March 30, 2016	August 2016	Sept. 30, 2016
March 2016	May 2, 2016	September 2016	Oct. 31, 2016
April 2016	May 31, 2016	October 2016	Nov. 30, 2016
May 2016	June 30, 2016	November 2016	Dec. 30, 2016
June 2016	Aug. 1, 2016	December 2016	Jan. 30, 2017

However, the New York Department of Health may permit payors who have at least one full year of payment experience and whose annual liability is not expected to exceed \$25,000, to pay the surcharge on an annual basis. More information on the due dates for paying the surcharge is available [here](#).

Covered Period	Due Date
Jan. 1, 2016 – Dec. 31, 2016	Jan. 30, 2017

Registered payors are required to file their Public Goods Pool reports electronically. They are also strongly encouraged to pay the surcharges through an electronic transfer of funds. More information on the electronic reporting process is available [here](#).

If a payor does not register, the health care provider's bill will be adjusted to include the surcharge.

COMPLIANCE AUDITS

Registered payors are subject to Public Goods Pool audits for **six years** after the close of the calendar year in which the surcharges were due. The audits cover both the health care services and covered lives surcharges. It is important that registered payors maintain records that demonstrate their compliance with the surcharge payment requirements. Payors that fail to provide documents requested during an audit and that cannot demonstrate good cause for the failure may be assessed a civil penalty of up to **\$10,000**.

MORE INFORMATION

For more information on New York's surcharges on health care services and covered lives, see the New York Department of Health's HCRA [website](#).