Final 2021 Notice of Benefit and Payment Parameters

July 1, 2020

QUICK FACTS

- Recently, the Department of Health and Human Services (HHS) issued its Final Notice of Benefit and Payment Parameters for 2021 (Final Rule).
- Under the Final Rule, the Affordable Care Act's (ACA's) out-of-pocket maximum limit will increase to $8,550 (self-only coverage) and $17,100 (family coverage) in 2021.
- The required contribution percentage for the individual mandate's affordability exemption will increase for 2021.
- The Final Rule clarifies that issuers, including employer-sponsored health plans, are permitted but not required to count the value of a manufacturer coupon discount toward the ACA's annual limit on cost-sharing.

On May 14, 2020, HHS released its Final Notice of Benefit and Payment Parameters for 2021 (Final Rule). The Final Rule describes benefit and payment parameters under the Affordable Care Act (ACA) for the 2021 benefit year. The Final Rule is effective July 13, 2020.

Updated standards included in the Final Rule relate to:

- maximum annual out-of-pocket limits on cost-sharing;
- treatment of drug manufacturer support, including coupons; and
- the individual mandate's affordability exemption.

Maximum annual out-of-pocket limits on cost-sharing

The ACA requires non-grandfathered plans to comply with an overall annual limit (or out-of-pocket maximum) on EHBs. The ACA requires the out-of-pocket maximum to be updated annually based on the percent increase in average premiums per person for health insurance coverage. Based on the Final Rule, the 2021 out-of-pocket maximum will increase to $8,550 for self-only coverage and $17,100 for family coverage (up from $8,150 and $16,300, respectively, for 2020).

Treatment of drug manufacturer support, including coupons

The Final Rule clarifies that issuers, including employer-sponsored health plans, are permitted but not required to count the value of drug manufacturer coupon discounts toward the ACA's annual limit on cost-sharing, regardless of whether a generic equivalent is available.

The clarification provides welcome relief for plan sponsors and health plans as it resolves ambiguities that were created by prior HHS guidance. In 2019, HHS finalized a rule ("New Rule") that would require the value of manufacturer coupon discounts to count towards the ACA's cost-sharing limits in certain circumstances. Health care industry stakeholders quickly pointed out to HHS that its New Rule would directly conflict with existing IRS guidance relating to high-deductible health plans (HDHPs).

Under that guidance, HDHPs were directed to disregard discounts, including drug coupons, when determining if a plan participant had satisfied the HDHP's minimum deductible. Consequently, as a temporary measure, FAQ guidance published jointly by the Department of Labor, HHS, and Treasury (collectively the "Departments") in 2019 announced that the Departments would not enforce HHS's New Rule and that HHS would resolve the conflict in its rules for 2021. Now that HHS's Final Rule resolves any conflicts, employers and issuers may take confidence in either including or excluding the value of drug coupon amounts from the annual cost-sharing limits.

The individual mandate's affordability exemption

Under the ACA, individuals who lack access to affordable minimum essential coverage (MEC) are exempt from the individual mandate penalty. For purposes of this exemption, coverage is considered affordable for an employee if the required contribution for the lowest-cost, self-only coverage does not exceed 8% of household income. The recent tax reform law reduced the ACA's individual mandate penalty to zero for individuals not retaining MEC after December 31, 2018. However, the Final Rule notes that individuals may still need to seek an affordability exemption to qualify for enrollment in Marketplace-based catastrophic coverage. In 2021, an individual will qualify for this affordability exemption if he or she must pay more than 8.27% of his or her household income for MEC.

Note, this affordability exemption is distinct from the separate ACA employer shared responsibility (ESR) rule that requires applicable large employers to offer coverage that meets certain minimum value and affordability standards. For purposes of ESR rule, the affordability threshold for self-only coverage remains 9.5% of household income (as adjusted annually by the IRS).

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