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Proposed Changes to Out-of-Pocket Maximums and Prescription Drug Coverage

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On January 24, the U.S. Department of Health and Human Services ("HHS") published its Annual Notice of Benefit and Payment Parameters for 2020. This guidance is a proposed rule that addresses certain provisions of the Affordable Care Act ("ACA"). This is just a proposed rule. Any changes will be formalized in a final rule (and may be different from what is below).

Briefly, the proposed rule includes:

- Likely caps on out-of-pocket dollar limits for 2020 non-grandfathered group health plans.
- A possible change to the definition of Essential Health Benefit that, if finalized as written, may permit some employer group health plans to impose an annual and/or lifetime dollar limit on certain brand-name prescription drugs when a generic is available and medically appropriate.

Background

HHS issues its Annual Notice of Benefit and Payment Parameters on a yearly basis, first in proposed form, and then as a final rule. While the proposed rule primarily addresses the ACA insurance exchanges or marketplaces, it does include some changes that would affect employer-sponsored health plans if finalized.

Change in the Out-of-Pocket Maximum

If the proposed rule becomes final, non-grandfathered group medical plans are likely to see an increase in the out-of-pocket maximum from $7,900 for self-only coverage and $15,800 for other than self-only coverage in 2019, to $8,200 for self-only coverage and $16,400 for other than self-only coverage in 2020. (Note that different out-of-pocket limits apply to high-deductible health plans, for purposes of making contributions to a health savings account.)

HHS calculated the new dollar limits based on a proposed change in the methodology for determining the annual premium adjustment percentage. Beginning in 2020, HHS

has proposed to use an alternative premium measure that captures increases in individual market premiums, in addition to increases in employer-sponsored insurance premiums, to calculate the premium adjustment percentage.

Exclusion of Brand Name Drugs from Essential Health Benefits

Because of increased prescription drug costs, HHS has proposed to allow individual and group medical plans that cover both brand name drugs and their generic equivalent to exclude the brand name drug as an "essential health benefit" ("EHB") if the generic equivalent is available and medically appropriate for the enrollee. This would become effective in 2020.

In addition, HHS proposes that if an enrollee purchases the brand name drug when the generic equivalent is available and medically appropriate, the plan would be permitted to ignore the difference in price between the brand name drug and the generic equivalent in calculating the individual's deductible and out-of-pocket maximum (or other cost-sharing). This would be true even though the individual paid the higher price for the brand name drug. Under the proposed rule, plans would still have an obligation to count the price of the generic drug towards the individual's deductible and out-of-pocket maximum (or other cost-sharing).

HHS is also considering an alternate proposal that would allow a plan to exclude the entire amount that an enrollee paid for a brand name drug (for which there is a medically appropriate generic equivalent) from the individual's deductible and out-of-pocket maximum (or other cost-sharing).

Finally, if the proposed rule becomes final, plans could impose lifetime and annual dollar limits on brand name drugs, because they would no longer be considered "essential health benefits."

Employer Action

This is a proposed rule. Nothing in this guidance is final, and at this point there are no changes affecting health plans.

Any final (or interim final) guidance will come at a later date and may not reflect what is currently included in the proposed rule.

We will continue to monitor developments in this area and will keep you posted of relevant updates.