buckconsultants

xerox

FYI®
For Your Information®

Volume 38 | Issue 77 | June 4, 2015

Self-Funded and Large Group Plans May Need "Embedded" Cost-Sharing Limits in 2016

The departments recently confirmed that, effective for plan years beginning in 2016, non-grandfathered self-funded and large group health plans must apply an embedded self-only OOP maximum to each individual enrolled in family coverage if the plan's family OOP maximum exceeds the ACA's OOP limit for self-only coverage ($6,850 for 2016). This significant change affects the design of many employer-sponsored plans — in particular, high-deductible health plans that commonly impose a single overall family OOP limit on family coverage without an underlying self-only OOP maximum.

Background

The Affordable Care Act (ACA) limits the annual amount of cost sharing that small group plans and individual plans can impose on an enrollee for essential health benefits (EHBs). In 2013 final regulations, the Department of Health and Human Services (HHS) confirmed that these ACA out-of pocket (OOP) maximums, indexed annually, apply to non-grandfathered self-insured and large group health plans. Cost sharing, for these purposes, includes deductibles, coinsurance and copayments for in-network providers. For information on EHBs and the 2013 ACA OOP final regulations, please see our February 27, 2013 *For Your Information*.

Earlier this year, HHS issued its 2016 Notice of Benefit and Payment Parameters. While focused primarily on ACA marketplaces and insurers, the guidance also covers a number of topics affecting large employer and self-insured group health plans, such as the ACA's OOP maximums on EHBs for 2016. The OOP limits for 2016 are $6,850 for self-only coverage and $13,700 for other than self-only coverage.

In the preamble to this guidance, HHS stated it was "clarifying" that, effective for plan years beginning on and after January 1, 2016, the ACA's annual OOP maximum for self-only coverage applies to all individuals — including those enrolled in other-than-self-only coverage. This means that no individual can be required to pay more in annual cost-sharing than the ACA self-only OOP limit, even though a family unit as a whole may be subject to the higher overall OOP maximum. In essence, the self-only ACA OOP maximum is "embedded" in the other-than-self-

only coverage. (See our March 25, 2015 *For Your Information*).

Significantly, the preamble language interprets ACA Section 1302, which applies to small group and individual coverage — and not directly to self-funded and large group plans. In a May 8, 2015 memo, HHS instructed issuers to provide the self-only annual cost-sharing limitation for each individual "regardless of whether the individual is enrolled in a self-only or other than self-only plan." The DOL posted this memo on its website, indicating that it viewed ERISA plans as subject to this requirement. However, the applicability of embedded self-only OOP limits to self-funded and large group plans remained uncertain given Section 1302's direct application to small group and individual coverage.

Embedded OOP Limits Apply to Self-Funded and Large Group Plans

On May 26, 2015, the Departments of Labor and Treasury, along with HHS (the departments), issued FAQs removing this uncertainty. The guidance states that, for plan or policy years beginning in or after 2016, the ACA's self-only OOP maximum applies to each individual in any non-grandfathered group health plan, including self-insured and large group health plans, regardless of whether the individual is enrolled in self-only or other-than-self-only coverage. This means that self-funded and large group plans may not require any individual to pay more than $6,850 in cost-sharing for EHB in 2016 — even if the individual has not reached the plan's family OOP limit. Because a deductible is a form of cost-sharing, a plan with a family deductible greater than $6,850 in 2016 must incorporate an embedded self-only deductible that does not exceed that amount.

Not Needed Where Family Deductible ≤ $6,850

An embedded self-only OOP maximum is required only where a plan's family OOP maximum exceeds the ACA's OOP limit for self-only coverage. For example, a plan with a family OOP maximum of $6,000 in 2016 would not need an embedded self-only OOP maximum.

To illustrate this rule, the guidance provides the following breakdown of how a plan's OOP limits would apply in 2016 to a family of four (for example, a mother, father, son and daughter) enrolled in family coverage with a family OOP maximum of $13,000:

- Mother incurs claims associated with $10,000 in cost-sharing
- Father, son, and daughter each incur claims associated with $3,000 in cost-sharing
- Because the ACA self-only OOP maximum applies to each individual, the mother's cost-sharing is limited to $6,850 and the plan would pay the $3,150 difference between the $10,000 in cost sharing and the $6,850 self-only OOP maximum

Because the plan's family OOP maximum is $13,000, the plan would pay the $2,850 difference between the family's $15,850 aggregate cost sharing ($6,850 for mother plus $3,000 each for the father, son and daughter) and the plan's $13,000 annual OOP limit for family coverage.

> **Comment.** Some third party administrators (TPAs) and insurers currently have system or technical limitations that could affect an employer's approach to complying with the embedded self-only OOP maximum requirement. Therefore, an employer should consult with its claims administrator to determine if such limitations exist — and if so, what plan design changes would be required.

Additionally, employers with carve-out benefits (e.g., prescription drugs) should ensure that the embedded self-only OOP maximums incorporate those benefits. Hospitals with multi-tier in-network benefits will also need to coordinate compliance with this OOP requirement across all in-network tiers.

Significant Concerns for HDHPs

Many health savings account (HSA)-compatible high-deductible health plans (HDHPs) currently have a single overall family deductible without an embedded self-only deductible. For example, where an HDHP has a deductible of $5,000 for self-only coverage and a deductible of $10,000 for family coverage, a single individual enrolled in family HDHP coverage could incur OOP costs up to $10,000 before meeting the family deductible. A plan's deductible counts towards its OOP maximum.

According to the new guidance, this typical HDHP plan design would not be permitted in 2016 if the HDHP's family deductible is greater than $6,850. Thus, for example, family HDHP coverage with a 2016 family deductible of $10,000 would need an embedded self-only deductible of no more than $6,850.

Comment. HSA-compatible HDHP OOP maximums are lower than ACA OOP maximums. For example, in 2016, the HSA-compatible HDHP OOP maximum is $6,550 for self-only coverage and $13,100 for family coverage, while the ACA's OOP maximum is $6,850 for self-only coverage and $13,700 for other-than-self-only coverage. (See our May 7, 2015 *For Your Information*.) Employers offering HDHP/HSA plans must ensure that they satisfy the lower HDHP OOP maximums.

In Closing

The application of embedded OOP limits to non-grandfathered self-funded and large group plans is a significant new development. Sponsors of group health plans featuring an overall family deductible or OOP maximum greater than $6,850 must evaluate their 2016 plan designs in short order and discuss with their TPA or insurer how it will administer embedded self-only OOP limits.

Volume 38 | Issue 77 | June 4, 2015

Authors
Julia Zuckerman, JD
Leslye Laderman, JD, LLM

Produced by the Knowledge Resource Center of Buck Consultants at Xerox
The Knowledge Resource Center is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your account executive or email fyi@xerox.com.

You are welcome to distribute *FYI*® publications in their entireties. To manage your subscriptions, or to sign up to receive our mailings, visit our Subscription Center.

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.