buckconsultants

xerox

FYI®
For Your Information®

Volume 38 | Issue 173 | December 31, 2015

California Requires Embedded Cost-Sharing and Deductible Limits for Insured Plans

Beginning in 2016, insured plans in California must apply an embedded self-only OOP maximum to each individual enrolled in family coverage — unless the carrier received a one-year extension on this requirement. In 2017, large group plans must also embed a self-only deductible (this requirement applies in 2016 for individual and small group plans). In light of these changes, employers with insured HSA-compatible HDHPs in California may need to increase their self-only OOP maximum limits to avoid dipping below the minimum deductible required for family HDHP coverage.

Background

The Affordable Care Act (ACA) limits the annual amount of cost-sharing — also referred to as out-of-pocket (OOP) expenses — that group plans and individual policies can impose on an enrollee for essential health benefits (EHBs). Cost-sharing, for these purposes, includes deductibles, coinsurance and copayments for in-network providers. The ACA OOP maximum limits for 2016 are $6,850 for self-only coverage and $13,700 for other than self-only ("family") coverage. Insured plans in California are also regulated by state law.

To be eligible to contribute to a Health Savings Account (HSA), federal law requires that an individual be covered under a high deductible health plan (HDHP) that meets certain deductible thresholds. In 2016, an HDHP must have a minimum deductible of $1,300 for self-only coverage and $2,600 for family coverage. (See our May 7, 2015 *For Your Information.*) These limits apply to self-insured and insured plans alike.

Embedded OOP Limits, Deductibles Now Required for Insured Plans in California

In AB 1305, which Governor Jerry Brown (D) signed into law on October 8, 2015, the California legislature imposed a maximum OOP limit for an individual participant in family coverage that is no greater than the maximum OOP limit for self-only coverage for that insurance product — effective January 1, 2016. This means, beginning in 2016 (absent an extension, as discussed below), an

insured plan in California may not require any individual with family coverage to pay more in OOP expenses than the amount of the maximum OOP limit for self-only coverage under the insurance product. In essence, the self-only OOP maximum is "embedded" in the family coverage.

> **Comment.** Earlier this year, the Departments of Labor and Treasury, and Health & Human Services issued guidance stating that, effective for plan years beginning on and after January 1, 2016, the ACA OOP maximum for self-only coverage ($6,850) applies to all individuals — including those enrolled in family coverage. (See our June 4, 2015 *For Your Information.*) The California embedded OOP maximum limit, in contrast to this federal requirement, depends on the amount of the self-only OOP maximum for the insurance product at issue.
>
> **Example of AB 1305's Embedded OOP Requirement.** If an insurance product's self-only coverage has a $4,000 OOP maximum and the family coverage has an $8,000 OOP maximum, an individual participant in the family coverage cannot be required to pay more than $4,000 in OOP expenses. This is more restrictive than the ACA OOP maximum.

These requirements apply to insured plans in California only — not to self-insured plans.

Additionally, AB 1305 requires embedded deductibles for large group (101 or more employees) plans, effective on or after January 1, 2017 (embedded deductibles for individual and small group plans are required effective January 1, 2016). This means that if a family plan in the group market includes a deductible, the plan may not impose on an individual participant in family coverage a deductible greater than the deductible for self-only coverage.

OOP Expenses v. Deductibles

The term "OOP expenses" refers to all cost-sharing expenses.
A deductible is one type of cost-sharing. Other types of cost-sharing include coinsurance and copayments.

For example, if a family plan has an individual deductible of $500 and a family deductible of $1,000, the plan may impose a deductible of no more than $500 on an individual participant in family coverage. For HSA-compatible HDHPs, however, the embedded deductible must be the greater of the annual IRS minimum deductible amount for family HDHP coverage ($2,600 in 2016), or the plan's individual deductible.

> **Comment**. Presumably, this provision was included to factor in the federal deductible thresholds required for HDHPs.

A Problem for Insured HDHP/HSA Plans in California

AB 1305 poses a compliance concern for employers offering insured HSA-compatible HDHP coverage in California that currently feature a self-only deductible or OOP maximum amount that is below the minimum deductible required for family HDHP coverage.

> **Example.** In 2016, a large group family HDHP has a self-only deductible of $1,400 and OOP maximum of $2,000, and a family deductible of $3,000 and OOP maximum of $5,000. If the plan embeds the $2,000 OOP maximum as required by AB 1305 the plan would start paying benefits to that individual when the $2,000 self-only OOP has been satisfied and before the family has met the minimum $2,600 deductible required for the plan to qualify as HDHP family coverage under federal rules. For the plan to satisfy the

requirements of AB 1305 and at the same time comply with federal HSA-HDHP rules in 2016, the plan would have to increase the self-only OOP maximum to meet the family $2,600 deductible threshold.

While the embedded deductible rule for large group plans is not effective until 2017, the embedded OOP maximum rule goes into effect in 2016, absent an extension. In 2017, the large group plan in the example above would also need to embed a self-only deductible amounting to at least the minimum HSA-HDHP deductible amount required in 2017 under federal law or the plan's self-only deductible, whichever is greater.

Opportunity for Extension

We have confirmed that the California Department of Managed Health Care sent a letter to "Full Service Health Plans" dated November 16, 2015 allowing them to, by November 23, 2015, request an extension of the effective date of AB 1305 from January 1, 2016 to plans issued, amended or renewed on or after January 1, 2017.
To receive this extension, plans were required to explain how compliance by January 1, 2016 "would be disruptive for enrollees and would cause unexpected cost share increases or health care service contract withdrawals."

The California Department of Managed Health Care (DMHC)

The DMHC regulates all Health Maintenance Organizations (HMOs), as well as Blue Shield of California and Blue Cross of California plans. The California Department of Insurance regulates most other Preferred Provider Organizations (PPOs) in California.

In Closing

Employers with insured plans in California should work with their carriers to review their self-only OOP maximum and deductible limits in light of AB 1305, and determine if the carrier received an extension.

Authors
Julia Zuckerman, JD
Amy Dunn, JD, MHA

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.