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HHS Finalizes 2017 OOP Maximums and Marketplace Guidance

The Department of Health & Human Services has finalized the 2017 out-of-pocket maximums of \$7,150 for self-only coverage and \$14,300 for other than self-only coverage, and provided guidance on other marketplace issues, including notices for employers and the open enrollment period for 2017 and later years.

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Background

Each year, the Department of Health & Human Services (HHS) releases the HHS Notice of Benefit and Payment Parameters that provides important guidance related to the Affordable Care Act (ACA) marketplaces and various ACA provisions. Late last year, HHS released the [proposed rule](#) for 2017 and a [fact sheet](#) that summarized the guidance. (See our [December 23, 2015 For Your Information](#).) On February 29, HHS issued the [final rule](#) for 2017 and an updated [fact sheet](#). Although the final guidance is primarily focused on the ACA marketplaces and insurers offering programs, it includes items that affect large employer and self-insured group health plans, such as:

ACA Indexed Dollar Amounts

A [table](#) summarizing the various ACA indexed dollar amounts by year is included at the end of this publication.

- ACA out-of-pocket maximums
- Marketplace notices to employers
- 2017 marketplace open enrollment period

Out-of-Pocket Maximums

Effective for plan years beginning on or after January 1, 2014, the ACA imposes annual in-network out-of-pocket (OOP) maximums on the amount that an enrollee in a non-grandfathered health plan, including self-insured and large group health plans, must pay for essential health benefits (EHB) through cost-sharing. (See our [For Your Information from March 11, 2014](#).)

In 2016 the OOP limits are \$6,850 for self-only coverage and \$13,700 for other than self-only coverage. HHS has finalized the 2017 OOP maximums of \$7,150 for self-only coverage and \$14,300 for other than self-only coverage.

Marketplace Notices to Employers

Currently, marketplaces are required to contact an employer when an employee has been determined to be eligible for subsidies to purchase marketplace coverage. This notice lets the employer know that it may be subject to an employer shared responsibility assessment, and that the employer can appeal the subsidy determination. The final rule changes this requirement such that the federally facilitated marketplaces (FFMs) will only be required to notify the employer when a subsidy-eligible employee has enrolled in a marketplace plan. CMS released a set of [FAQs](#) last year that provide additional guidance on the notices and clarify that state-based marketplaces have the option to follow a similar process.

Marketplace Annual Open Enrollment Period

The annual open enrollment for individual policies both inside and outside the FFM marketplaces for the 2016 benefit year ended on January 31, 2016. The open enrollment periods for the 2017 and 2018 benefit years will be consistent with that timeframe and run from November 1, 2016 through January 31, 2017, and November 1, 2017 through January 1, 2018, respectively. Starting with the 2019 benefit year, the annual open enrollment period will be November 1 to December 15. The change is intended to permit a full year of coverage for most consumers and to reduce adverse selection risks for insurers. The shorter open enrollment time period is also considered more reflective of a mature market.

PACE Act

The Protecting Affordable Coverage for Employees Act (PACE Act) rescinded the ACA's scheduled 2016 expanded definition of "small employer" from 1 to 50 employees to include employers with 51 to 100 employees, and instead allows each state to decide independently whether to expand the definition. (See our [Legislate from October 12, 2015](#).) CMS issued a set of [FAQs](#) on the impact of the change. Most states have retained the 1 to 50 employee definition of small employer. The final rule implements the change set forth in the PACE Act.

Comment. Starting in 2017, states can allow employers with more than 100 employees to participate in the ACA marketplaces. The notice does not address this provision. Given that the PACE Act was enacted because most states did not want to increase the definition of small employer to 51 to 100 employees, it seems unlikely that states will opt to open up their marketplace to larger employers.

States with Expanded Definition

Only five states have [notified CMS](#) that they will expand the definition of small employer to 100 employees:

- California
- Colorado
- New York
- Vermont
- Virginia

ACA Indexed Dollar Amounts

The table below summarizes the ACA indexed dollars limits for 2017 and prior years.

ACA Indexed Dollar Amounts							
	Out-of-Pocket Maximums (1,5)		PCORI Fee (2,5)	Transitional Reinsurance Fee (6)	Health FSA Salary Reduction Cap (3,5)	Employer Shared Responsibility Annual Assessments (1,4,6,7)	
	Self-Only	Other than Self-Only				4980H(b) – Failure to Offer Affordable, Minimum Value Coverage	4980H(a) – Failure to Offer Coverage
2017	\$ 7,150	\$ 14,300	Not available	N/A	Not available	\$2,260 (Est.)	\$3,390 (Est.)
2016	\$ 6,850	\$ 13,700	Not available	\$ 27	\$ 2,550	\$ 2,160	\$ 3,240
2015	\$ 6,600	\$ 13,200	\$ 2.17	\$ 44	\$ 2,550	\$ 2,080	\$ 3,120
2014	\$ 6,350	\$ 12,700	\$ 2.08	\$ 63	\$ 2,500	\$ 2,000	\$ 3,000
2013	N/A	N/A	\$ 2.00	N/A	\$ 2,500	N/A	N/A
2012	N/A	N/A	\$ 1.00	N/A	N/A	N/A	N/A

Notes:

- (1) Indexed to increase in average per capita premium for U.S. health insurance coverage in prior calendar year.
Out-of-pocket maximum does not apply to grandfathered plans or retiree-only plans
- (2) Indexed to increases in national health expenditures
- (3) Indexed for CPI-U
- (4) One-twelfth of annual amount assessed on monthly basis. No assessments for 2014
- (5) Applies on a plan year basis
- (6) Applies on a calendar year basis
- (7) 2015 and later assessment amounts have not been released. Estimate based on increase in average per capita premium for U.S. health insurance coverage as determined by HHS

N/A – Not applicable

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