BUCK

US

FYI®
For Your Information®

Celebrating 40 years of FYI®

HHS Proposes 2020 Out-of-Pocket Maximums

Volume 42

Issue 15

February 13, 2019

Authors
Leslye Laderman, JD, LLM
Richard Stover, FSA, MAAA

The Department of Health & Human Services (HHS) has proposed 2020 out-of-pocket maximums for non-grandfathered plans of $8,200 for self-only coverage and $16,400 for other than self-only coverage. These proposed amounts reflect a change in how HHS determines the amount of the adjustment — a change that, if finalized, would also affect the employer shared responsibility assessment amounts for 2020. In addition, HHS has also proposed rules that would change how amounts paid for brand-name drugs are applied towards the out-of-pocket maximums.

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. On January 24, 2019, HHS published the proposed rule for 2020 and a Fact Sheet that summarizes its most significant elements. While primarily focused on the ACA marketplaces and insurers offering programs, the proposed rule also includes guidance affecting large employer and self-insured group health plans.

What's the "premium adjustment percentage"?

The "premium adjustment percentage" is the percentage (if any) by which the average per capita premium for health insurance coverage for the preceding calendar year exceeds such average per capita premium for health insurance for 2013.

The "premium adjustment percentage" is used to determine changes to:

- Annual OOP maximum
- Employer shared responsibility assessment amounts
- Premium tax credit affordability thresholds

Out-of-pocket maximums

The ACA imposes annual 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 February 27, 2013 *For Your Information*.) These

limits are subject to adjustment annually based on a “premium adjustment percentage” determined each year by HHS.

HHS proposes to change its method for determining the premium adjustment percentage by using the average per enrollee premium for private individual and group health insurance (other than Medigap and property and casualty insurance) instead of the average per enrollee premium for employer-sponsored coverage as it had in previous years. Based on its proposed premium adjustment percentage for 2020, the 2020 OOP maximums would be $8,200 for self-only coverage and $16,400 for other than self-only coverage. This represents an approximately 3.8 % increase over 2019 OOP limits, which are $7,900 for self-only coverage and $15,800 for other than self-only coverage.

Treatment of brand-name drugs

Generally, all prescription drugs covered by a plan are considered to be EHBs. This means that not only does an individual’s cost-sharing for those drugs count toward the applicable out-of-pocket maximum, but the plan cannot impose any annual or lifetime dollar maximum on the drugs.

Citing the need to disincentivize the use of brand-name drugs, HHS set out two proposals that would be effective for plan years beginning on and after January 1, 2020. The first proposal would permit a plan that covers both a brand prescription drug and its generic equivalent to consider the brand-name drug to not be an EHB. Treatment as a non-EHB would be permitted only if the generic drug is available and medically appropriate for the enrollee and the plan provides a method for enrollees to request and obtain an exception.

Are prescription drugs EHBs?

Although self-insured group health plans do not have to cover all EHBs, they cannot apply lifetime or annual dollar limits on the EHBs they do cover. Generally, all prescription drugs covered by a plan are considered to be EHBs.

If the conditions are met, the plan would only be required to attribute the cost-sharing that would have been paid for the generic equivalent toward the annual OOP maximum and could disregard the difference in cost-sharing between the brand-name drug and the generic equivalent drug. In addition, the plan would be permitted to impose lifetime and annual dollar limits on those brand-name drugs because they would no longer be considered EHBs subject to the prohibition on such limits.

Under the second proposal. the entire amount paid by a patient for a brand-name drug for which there is a medically appropriate generic equivalent could be excluded from the OOP maximum.

> **Buck comment**. HHS has asked for comments about both these proposals, including comments on any limitations a plan's or issuer's information technology systems would have on administering cost-sharing consistent with the proposed policies.

Employer shared responsibility assessment amounts

Applicable large employers (ALEs) are potentially subject to one of two nondeductible "shared responsibility" assessments if they have at least one full-time employee who enrolls in public marketplace coverage and receives a premium tax credit.

"Play or pay" assessment. This assessment may be imposed when an ALE fails to offer minimum essential coverage to at least 95% of its full-time employees and their dependent children during a month and at least one of its full-time employees receives a premium tax credit through a public marketplace. For 2019, the maximum annual assessment per full-time employee is estimated to be $2,500. Based on the proposed premium adjustment percentage for 2020, the maximum assessment for 2020 is estimated to be $2,590.

"Play and pay" assessment. This assessment may be imposed when an ALE offers minimum essential coverage to at least 95% of its full-time employees but a full-time employee receives a premium tax credit because: (1) the employer-offered coverage is unaffordable or fails to provide minimum value, or (2) the employee was not offered employer-sponsored coverage. For 2019, the estimated maximum annual assessment for each full-time employee receiving a premium tax credit is $3,750. Based on the proposed premium adjustment percentage for 2020, the maximum assessment for 2020 is estimated to be $3,890.

> **Buck comment**. The proposed premium adjustment percentage will also increase the income threshold for determining eligibility for the premium tax credit. A higher threshold would mean that fewer individuals would qualify for a premium tax credit and thus potentially reduce an employer's exposure to the "play and pay" assessment.

For an in-depth discussion about the shared responsibility assessments, see our April 17, 2014 *FYI In-Depth.*

ACA indexed dollar amounts

The table below summarizes the ACA indexed dollar limits for 2020 and prior years.

ACA indexed dollar amounts								
	Out-of-Pocket Maximums (1,9)		PCORI Fee (2,5)	Transitional Reinsurance Fee (6)	Health FSA Salary Reduction Cap (3,9)	Employer Shared Responsibility Annual Assessments (1,4,6,7,8)		
	Self-Only	Other Than Self-Only				4980H(a) – Failure to Offer Coverage	4980H(b) – Failure to Offer Affordable, Minimum Value Coverage	Affordability Threshold Under 4980H(b)
2020	$8,200	$16,400	N/A	N/A	Not available	$2,590 (Est.)	$3,890 (Est.)	Not available
2019	$7,900	$15,800	N/A	N/A	$2,700	$2,500 (Est.)	$3,750 (Est.)	9.86%
2018	$7,350	$14,700	$2.45	N/A	$2,650	$2,320	$3,480	9.56%
2017	$7,150	$14,300	$2.39	N/A	$2,600	$2,260	$3,390	9.69%
2016	$6,850	$13,700	$2.26	$27	$2,550	$2,160	$3,240	9.66%
2015	$6,600	$13,200	$2.17	$44	$2,550	$2,080	$3,120	9.56%
2014	$6,350	$12,700	$2.08	$63	$2,500	$2,000	$3,000	9.50%
2013	N/A	N/A	$2.00	N/A	$2,500	N/A	N/A	N/A
2012	N/A	N/A	$1.00	N/A	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) Applicable dollar amount affected by when plan year ends. No assessment for plan years ending on and after October 1, 2019
(6) Applies on a calendar year basis
(7) 2019 and 2020 assessment amounts have not been released. Estimates based on increase in average per capita premium for U.S. health insurance coverage as determined by HHS
(8) Affordability threshold adjusted consistent with Code Section 36B(b)(3)(A)(i)
(9) Applies on a plan year basis

N/A Not applicable

Produced by the Knowledge Resource Center

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.