2022 ACA cost-sharing caps and other changes set; ESR penalties projected

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The US Department of Health and Human Services (HHS) has released Part 2 of the Notice of Benefit and Payment Parameters for 2022. The annual notice primarily addresses Affordable Care Act (ACA) standards for the small-group and individual insurance markets, but also has some items that affect employer-sponsored plans. The notice provides the adjustment factor used to update the ACA's cost-sharing limits (also called the out-of-pocket (OOP) maximums), employer shared-responsibility (ESR) assessments and the maximum employee contribution percentage for "affordable" employer coverage. The latest notice also creates a special-enrollment period so COBRA beneficiaries can enroll in individual market coverage after losing government- or employer-paid COBRA subsidies. Other items in the notice focus on implementation and enforcement of existing standards and increased transparency for prescription drug information in the individual and small-group insurance markets. This GRIST describes the provisions that most directly affect large employer-sponsored plans.

Calculation of adjustment factor reverts to old method

HHS determines the annual adjustment to the ACA's in-network OOP maximums and ESR assessments using the "premium adjustment percentage." This figure reflects the average per capita growth in private health insurance premiums since 2013. Although the method of determining the premium growth rate for 2020 and 2021 included individual market data, HHS has reverted to the method used from 2015 to 2019, which includes only employer-sponsored insurance plan data. This method sets the 2022 premium adjustment percentage at 1.3760126457.

2022 ACA in-network OOP maximums

Using the final premium adjustment percentage, the 2022 ACA in-network OOP maximums for essential health benefits (EHBs) under nongrandfathered group health plans are:

- **Self-only coverage:** $8,700
  - This amount is also the embedded individual in-network OOP maximum for family coverage. Self-insured and large-group insured nongrandfathered health plans must embed an individual in-network OOP

maximum in any coverage tier that is broader than self-only and has a family OOP limit greater than the ACA-required self-only OOP limit.

- **Coverage other than self-only:** $17,400

These figures represent an approximately 1.8% increase above the 2021 OOP maximums of $8,550 for self-only coverage and $17,100 for all other coverage tiers.

High-deductible health plans (HDHPs) qualifying to work with health savings accounts (HSAs) have different limits. The 2022 HDHP OOP maximums for HDHPs are $7,050 for self-only coverage and $14,100 for other coverage tiers, up from $7,000 and $14,000 in 2021.

2022 ESR assessments projected

The premium adjustment percentage is also used to adjust the ESR assessment. Although IRS has not yet announced the 2022 adjusted amounts, Mercer has projected the 2022 ESR assessments by applying the final premium adjustment percentage:

- **Employers not offering coverage:** $2,750 per full-time employee (a 1.9% increase from $2,700 for 2021)
- **Employers offering coverage that is unaffordable or lacks minimum value:** $4,120 per full-time employee who receives subsidized coverage through a public exchange (a 1.5% increase from $4,060 for 2021)

IRS is expected to announce the 2022 assessments in regularly updated ESR Q&As (#55) posted on the agency's website.

Projected 2022 ESR required contribution percentage

The premium growth rate used to update the premium adjustment percentage is also part of the IRS formula for calculating the "required contribution percentage." This percentage determines whether an employee's contribution for employer coverage is affordable for ESR purposes. In the past, IRS has adjusted this percentage using HHS's method for determining the premium growth rate. Using that method, Mercer has projected the 2022 affordability figures for employer coverage:

- **Projected 2022 required contribution percentage.** The required contribution percentage for 2022 should decrease to 9.61%, down from 9.83% for 2021.
- **Projected federal poverty level (FPL) safe harbor amount.** For employers that use the FPL safe harbor, the monthly employee contribution limit for the lowest-cost, self-only option should decrease to $103.15, down from $104.53 for 2021.

Impact on premium tax credits

IRS will likely use the revised HHS methodology in future years to adjust the premium tax credit that eligible individuals can receive for public exchange coverage. HHS states that the new methodology will increase premium tax credits starting in 2023. For 2021 and 2022, the American Rescue Plan Act of 2021 (ARPA) temporarily increases public exchange subsidies in lieu of annual indexing.

New special-enrollment events created

Individuals seeking public exchange coverage generally must enroll during an annual enrollment period, unless they experience certain events triggering eligibility for a special-enrollment period (SEP). The final notice adds two new events that trigger a SEP for individuals losing subsidized COBRA coverage. Both SEPs apply across the entire individual insurance market — public exchanges in all states (whether run by the state or federal government), as well as the off-exchange private individual insurance market.

Complete cessation of government contributions to COBRA

If the government is paying all or part of an individual's COBRA premium, the complete cessation of this subsidy triggers a special-enrollment opportunity for individual market coverage. The government subsidy includes, but is not limited to, the COBRA subsidy under ARPA. Only complete, not partial, cessation of the subsidy triggers the SEP.

The date of the triggering event for the SEP is the last day of the period when the government subsidized all or part of the coverage. Individuals have 60 days before or after that date to enroll in coverage.

> *Example.* Maria gets laid off on June 1 and enrolls in fully subsidized COBRA coverage due to the ARPA. The ARPA COBRA subsidy will expire on Sept. 30, so Maria will become responsible for the full COBRA premium on Oct. 1. If she decides to end her COBRA coverage when the ARPA subsidy expires, she will have 60 days before (from Aug. 2 through Sept. 30) or after (Oct. 1 through Nov. 29) the last date of subsidized COBRA coverage to enroll in individual insurance coverage.

Complete cessation of employer contributions to COBRA

Complete cessation of employer contributions for COBRA coverage likewise will trigger a SEP. A reduction in an employer's COBRA contribution does not trigger a SEP — the employer must cease its contributions entirely. Employer contributions include complete or partial payment of an individual's COBRA premium. In the preamble to the notice, HHS states that an employer's payment of a 2% administrative fee for COBRA coverage doesn't qualify as an employer contribution, since employers do not have to charge this fee.

According to the notice, this is not a change for the federal Healthcare.gov exchange, which currently allows a SEP when employer contributions to COBRA cease. However, state exchanges and off-exchange individual market insurers now must offer the same SEP.

The date of the triggering event for the SEP is the last day of the period when the employer either completely or partially subsidized COBRA coverage. Individuals have 60 days before or after that date to enroll in coverage.

> *Example.* Michael is laid off on June 1, 2022. He enrolls in COBRA. His former employer pays 50% of the COBRA premium. Later that year, the employer informs Michael that it is completely terminating its COBRA contributions after Sept. 30, 2022. Beginning Oct. 1, 2022, Michael will be responsible for 100% of the COBRA premium. If Michael decides to end COBRA coverage effective Oct. 1, he will have 60 days before or after Sept. 30 to enroll in an individual market plan.

Other changes

Every year, the notice addresses a myriad of operational and enforcement standards for the individual and small-group insurance market, including some specific to the qualified health plans (QHPs) on public exchanges. However, the 2022 notice has a few items of potential interest to employers sponsoring group health plans.

Medical loss ratio. Medical loss ratio (MLR) requirements apply to health insurers, including those providing large-group insurance coverage. The latest notice allows insurers more flexibility to pay out an MLR rebate early. The notice also makes some technical changes to MLR rules, such as adding a definition of "prescription drug rebates and other price concessions" to calculate the MLR.

EHB benchmark plans. Many self-insured employer health plans select a state EHB benchmark plan to determine which benefits are subject to certain ACA mandates. Last year's notice required states to annually report certain information about their benchmark plans, starting July 1, 2021. This year's notice states that HHS will not enforce the reporting requirement in 2021 and will not publish any 2021 reports on its website.

ACA pharmacy benefit manager (PBM) transparency. For the first time, this year's notice implements the ACA's PBM transparency requirements. Under the ACA's amendments to the Social Security Act, health benefit plans or other entities providing PBM services to QHPs or Medicare Part D plans must disclose certain information to HHS. The notice places the reporting obligation directly on PBMs and any QHP issuers that do not contract with a PBM. These disclosures are to HHS only, not to the public. HHS last year set out some specifics on the form and manner of this data collection.

Upcoming pharmacy transparency rules for employer plans. Employers await more details on implementation of the Consolidated Appropriations Act of 2021 (CAA), which requires group health plans to disclose certain prescription drug and other information to relevant agencies. Large employer plan sponsors may want to review the notice's prescription drug transparency-reporting requirements for exchange and off-exchange QHPs and their contracted PBMs. The required disclosures for group health plans and QHPs don't directly overlap, but both do require disclosing information about prescription drug rebates, fees and other remuneration provided by drug manufacturers to the plan or its PBM. The notice says that HHS, along with Treasury and the Department of Labor (DOL), may issue future guidance explaining any interaction between the QHP and future CAA pharmacy data collections.

Transparency-in-coverage regulation. Another set of transparency rules, the 2020 final transparency-in-coverage regulation, will require large employer-sponsored plans and insurance issuers to publicly disclose extensive price and cost-sharing information beginning in 2022. Among other details. the disclosure must provide certain prescription drug pricing information, including a prescription drug's net price after manufacturer rebates, discounts, chargebacks and other reductions. HHS has released some information on the form and manner of this public disclosure in data collection notices published last year. Those templates set out the data elements for disclosures by HHS-regulated insurers. Whether DOL will create different templates for ERISA plans is unclear.

Drug coupons and OOP maximums. Unlike past notices in recent years, the current one makes no changes to how large employer-sponsored plans can treat drug manufacturer coupons when tracking individuals' costs toward the OOP maximum.

Employer issues

The main takeaways from the notice for large employers include the following:

- **Assess impact of revised indexing rules.** If IRS adopts HHS's revised methodology for determining the premium growth rate, the employee contribution limit under the FPL affordability safe harbor will decrease for the first time. Employers should take this change into account during 2022 plan design and budget planning. For example, an employer that set the 2021 employee contribution for the lowest-cost, self-only coverage at the FPL safe harbor amount will need to lower the monthly contribution for 2022 to stay within that safe harbor. This change is also likely to increase premium tax credits and cost-sharing reduction subsidies available to full-time employees seeking public exchange coverage because they were not offered affordable employer coverage. The change, along with ARPA's temporary increase in the amount and availability of premium tax credits, may prompt employers to revisit which employees are offered affordable coverage. Such employers should evaluate their risk for ESR assessments and consider affordable coverage alternatives for employees (especially lower-wage employees).

- **Note special-enrollment change**. The notice clarifies that former employees may enroll in individual insurance coverage after their COBRA subsidies end. Employers will want to keep this in mind as they implement the ARPA COBRA subsidy and communicate with former employees about coverage options. The SEP related to employer COBRA contributions may affect employer decisions about whether to contribute to COBRA coverage going forward.

- **Look out for prescription drug reporting rules for ERISA plans**. QHPs and other HHS-regulated entities have received specific formats and attestations for their drug transparency reports. Look for DOL to do the same for drug reporting by ERISA plans.

- **Expect additional HHS regulations for the individual market**. The latest notice is Part 2 of the annual notice initially finalized by the Trump administration in January 2021. Look for the Biden administration to issue separate rules undoing some of the earlier changes to standards for state innovation waivers and states' ability to create alternatives to public exchanges.

Related resources

Non-Mercer resources

- Rev. Proc. 2021-25 (IRS, May 10, 2021)

- Final Notice of Benefit and Payment Parameters for 2022, Part 2 (HHS, May 5, 2021)

- Press release for Part 2 (HHS, April 30, 2021)

- Fact sheet for Part 2 (HHS, April 30, 2021)

- Final Notice of Benefit and Payment Parameters for 2022, Part 1 (Jan. 19, 2021)

- Proposed Notice of Benefit and Payment Parameters for 2022 (Dec. 4, 2020)

- Final transparency-in-coverage rule (Federal Register, Nov. 12, 2020)

- Rev. Proc. 2019-29 (IRS, July 22, 2019)

Mercer Law & Policy resources

- 2022 HSA, HDHP and excepted-benefit HRA figures set (May 11, 2021)
- COBRA help, dependent care items in COVID-19 bill near enactment (March 10, 2021)
- Healthcare cost transparency rules and MLR changes finalized (Dec. 2, 2020)
- 2021 ACA out-of-pocket maximums, ESR penalties, other changes ahead (June 3, 2020)
- Agencies ease ACA rule on drug coupons and out-of-pocket costs (Sept. 3, 2019)
- New push for ACA innovation waivers aims to rekindle state interest (May 21, 2019)
- 2020 ACA cost-sharing caps set, play-or-pay penalties projected (May 8, 2019)

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