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FEBRUARY 3, 2020

HHS Proposes to Allow Health Plans to Exclude Drug Manufacturer Coupons from Annual Limits

Today, HHS issued the proposed Notice of Benefit and Payment Parameters ("NBPP") for the 2021 calendar year. The 2021 Proposed NBPP allows health plans, including self-insured group health plans, to *voluntary* count the value of drug manufacturer coupons toward the ACA annual limit on cost sharing. However, health plans would not be *required* to do so. If finalized in its current form, the 2021 NBPP would put an end to the rollercoaster ride that drug manufacturer coupons endured during the last 12 months.

Last year, in the 2020 Notice of Benefit and Payment Parameters, HHS started a firestorm by amending the regulations implementing the ACA cost-sharing requirements to address drug manufacturer coupons. Under the 2020 calendar year HHS rule, financial assistance which was provided to plan participants by drug manufacturers to reduce or eliminate out-of-pocket costs for specific brand name drugs did not have to be counted towards the annual cost-sharing limits, if there was an available and medically appropriate generic equivalent. Conversely, in all other situations (e.g., the participant uses a coupon but there is no generic equivalent available or the generic equivalent is determined not to be medically appropriate), the financial assistance was required to be counted towards the ACA out-of-pocket maximum.

After HHS finalized the 2020 NBPP, many plan sponsors were uncertain whether the rule actually applied to self-insured group health plans. At the same time, because of the rules applicable to high deductible health plans, plan sponsors were left wondering if the 2020 NBPP rule could be legally applied to HDHPs.

This uncertainty continued through the run-up to 2020 annual enrollment planning. However, in August 2019, HHS, IRS and DOL delayed the implementation of the 2020 NBPP controversial rule until at least January 1, 2021. The wording of the delay also called into question whether the rule actually would survive at all.

In what appears to have been regulatory prescience in August of last year, HHS now proposes to virtually eliminate the prior rule by allowing plan sponsors the option to include the value of drug manufacturer coupons as part of the ACA out-of-pocket limit. Even though the 2021 Proposed NBPP does not require the value of drug manufacturer coupons to be included, HHS intends that plan sponsors affirmatively address the issue with participants by informing them whether the value of coupons are included or excluded from the ACA out-of-pocket maximum. However, no specific new participant notice is proposed. Rather, HHS anticipates that the issue be addressed in existing plan documentation, such as the annual enrollment guide and summary plan description.