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New HHS Rule Regarding Manufacturer Drug Coupons Impacts ACA Cost-Sharing Limits

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The Notice of Benefit and Payment Parameters for 2020 released by the Department of Health and Human Services (HHS) finalizes a proposed rule regarding the calculation of the annual cost-sharing limits for health plan participants who receive financial assistance from drug manufacturers. This change is effective for plan years beginning on or after January 1, 2020 and applies to all non-grandfathered group health plans, including self-insured plans.

The Affordable Care Act (ACA) limits the amount that a health plan participant can be required to pay out-of-pocket each year for in-network essential health benefits. Drug manufacturers often offer coupons and other financial assistance to help patients reduce their out-of-pocket costs for prescription drugs. This assistance may be offered in situations where the drug manufacturer wants to compete with a new generic equivalent or as a way to help patients offset the cost of expensive drugs. Health plans have reacted by adopting copay accumulator programs which are designed to limit the extent to which this financial assistance is applied towards satisfaction of the plan's cost-sharing limits.

In the 2020 Notice of Benefit and Payment Parameters, HHS amended the regulations implementing the ACA cost-sharing requirements to address this issue. Under the new rule, financial assistance which is provided to plan participants by drug manufacturers to reduce or eliminate out-of-pocket costs for specific brand name drugs does not have to be counted towards the annual cost-sharing limits if there is 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 must be counted towards the ACA out-of-pocket maximum. This rule is intended to address the concern that the availability of drug coupons results in the use of brand name drugs when generic alternatives are available which, in turn, leads to higher prescription drug costs. States are given the discretion to adopt a different rule for insured plans, meaning they could require financial assistance to be counted toward the annual cost-sharing limits in all circumstances. Some states, including Virginia, West Virginia and Arizona, have already passed legislation addressing this issue.