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Annual Out-of-Pocket Maximum Adjustments Announced for 2022

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On April 30, 2021, the Department of Health and Human Services (“HHS”) published its Annual Notice of Benefit and Payment Parameters for 2022. This guidance is a final rule that addresses certain provisions of the Affordable Care Act (“ACA”). For purposes of employer-sponsored health plans, the final rule includes:

- Caps on out-of-pocket dollar limits for non-grandfathered group health plans with plan years that begin in 2022.
- A policy to codify that individuals with COBRA coverage may qualify for a special enrollment period to enroll in individual health insurance coverage based on the cessation of employer contributions or government subsidies (such as those provided for under the American Rescue Plan Act of 2021) to COBRA continuation coverage.

Change to the Out-of-Pocket Maximums

Under the final rule, non-grandfathered group medical plans will see an increase in the out-of-pocket maximum for plan years beginning on or after January 1, 2022 as follows:

- \$8,700 for self-only coverage; and
- \$17,400 for coverage other than self-only.

Note that different out-of-pocket limits apply to high-deductible health plans, for purposes of making contributions to a health savings account (“HSA”). The 2022 HSA thresholds will likely be announced in June 2021.

Special Enrollment Period for Individual Coverage

The final rules create a special enrollment opportunity to access the individual coverage market upon the loss of all employer (or government) contributions toward COBRA coverage.

Specifically, when an individual or their dependent is enrolled in COBRA continuation of coverage (or state “mini-COBRA”) and the employer (or the government) contributes toward the cost of that coverage, the individual will have a special enrollment opportunity into individual coverage when those employer contributions (or government subsidies) completely cease. It should be noted that this relief is limited to the individual coverage marketplace and does not extend to HIPAA special enrollment rights for purposes of enrollment in group health plan coverage. In other words, an individual with COBRA coverage that is subsidized by an employer (or government) generally will not have a special enrollment opportunity in an employer sponsored group health plan when those contributions cease.

This relief applies market-wide to individual health insurance coverage, including coverage purchased outside of the Exchange, directly from carriers or through insurance agents, as well as coverage acquired from state Exchanges.

The triggering event for this special enrollment period is the last day of the period for which COBRA continuation coverage was paid for or subsidized, in whole or in part, by an employer or a government entity.

An individual eligible for this special enrollment period would have 60 days before and after the triggering event (in this case, the last day for which the qualified individual or dependent has COBRA continuation coverage to which an employer or governmental entity is contributing) to select

an individual market plan through this special enrollment period.

These changes take effect on July 6, 2021.

Employer Action

Update out-of-pocket limits for plan years beginning on or after January 1, 2022.

Understand and communicate (as needed) that cessation of all employer (or government) contributions toward COBRA continuation of coverage may trigger a special enrollment opportunity for individual market coverage.