

HHS Proposes 2017 OOP Maximums and Marketplace Guidance

The Department of Health & Human Services has proposed 2017 out-of-pocket maximums of \$7,150 for self-only coverage and \$14,300 for other than self-only coverage, and provided guidance on other marketplace issues, including the open enrollment period for 2017.

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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 November 20, HHS released the [proposed rule](#) for 2017 and a [fact sheet](#) that summarizes the guidance. While this guidance is primarily focused on the ACA marketplaces and insurers offering programs, it includes areas that affect large employer and self-insured group health plans, such as:

- ACA out-of-pocket maximums
- 2016 marketplace open enrollment period

ACA Indexed Dollar Amounts

A table summarizing the various ACA indexed dollar amounts by year is included at the end of this publication.

Out-of-Pocket Maximums

Effective for plan years beginning on or after January 1, 2014, 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 [March 11, 2014 For Your Information](#).)

In 2016 the OOP limits will be \$6,850 for self-only coverage and \$13,700 for other than self-only coverage. HHS has proposed 2017 OOP maximums of \$7,150 for self-only coverage and \$14,300 for other than self-only coverage.

Transitional Reinsurance Program

The primary purpose of the transitional reinsurance program is to help stabilize premiums in the individual health insurance market from 2014 through 2016 by protecting insurers against the potential need to raise premiums due to the implementation of the ACA market reform rules. This program is funded by contributions from insurers in the individual, small group and large group markets, as well as by self-insured group health plans. (See our *For Your Information* from [September 25, 2015](#).)

HHS had previously released the reinsurance contribution rate for all three years and has not proposed any changes in these rates, or any extension of the reinsurance program beyond 2016.

Year	Reinsurance Rate
2014	\$ 63
2015	\$ 44
2016	\$ 27

Comment. No recommended increase in the reinsurance contribution rates, or extension of the program beyond 2016, is welcome news for plan sponsors.

Marketplace Notices to Employers

Currently, marketplaces are required to contact an employer when an employee has been determined to be eligible for subsidies to purchase marketplace coverage. The proposed regulations would change this requirement such that the federally facilitated marketplaces (FFMs) would only be required to notify the employer when a subsidy-eligible employee has also enrolled in a marketplace plan. The notice states that this approach more closely matches the statutory language on employer assessments occurring only when the employee is eligible and also enrolls. CMS has also released a set of [FAQs](#) that provide additional guidance on the notices. These FAQs clarify that state-based marketplaces have the option to follow a similar process.

Comment. To date, most of the state marketplaces have taken very limited actions in notifying employers when an employee has applied for an exchange subsidy.

Marketplace Annual Open Enrollment Period

The annual open enrollment for individual policies both inside and outside the FFM marketplaces for the 2017 benefit year will be November 1, 2016 through January 31, 2017. This is consistent with the open enrollment period for the 2016 benefit year. HHS requested comments on the open enrollment period for the 2018 benefit year.

Network Adequacy and Continuation of Care Requirements

Starting in 2017, the regulations propose new network adequacy standards and continuation of care requirements for FFM's when a provider is dropped from a network. However, these proposed requirements would only apply to qualified health plans offered in the public marketplaces, and not insured or self-insured employer plans offered outside of those marketplaces.

PACE Act

In October, the President signed into law the Protecting Affordable Coverage for Employees Act (PACE Act). (See our [October 12, 2015](#) *Legislate*.) The law rescinded the ACA's scheduled 2016 expanded definition of "small employer" from 1 to 50 employees to include employers with 51 to 100 employees, and instead allows each state to decide independently whether to expand the definition. CMS issued a set of [FAQs](#) on the implementation of the change. Most states have retained the 1 to 50 employee definition of small employer. The proposed regulations implement the change set forth in the PACE Act.

States with Expanded Definition

As of November 24, the following states have [notified CMS](#) that they will expand the definition of small employer to 100 employees:

- California
- Colorado
- New York
- Vermont
- Virginia

Comment. Starting in 2017, states can allow employers with more than 100 employees to participate in the ACA marketplaces. The notice does not address this provision. Given that the PACE Act was enacted because most states did not want to increase the definition of small employer to 51 to 100 employees, it seems unlikely that states will opt to open up their marketplace to larger employers.

ACA Indexed Dollar Amounts

The table below summarizes the ACA indexed dollars limits for 2017 and prior years.

ACA Indexed Dollar Amounts							
	Out-of-Pocket Maximums (1,5)		PCORI Fee (2,5)	Transitional Reinsurance Fee (6)	Health FSA Salary Reduction Cap (3,5)	Employer Shared Responsibility Annual Assessments (1,4,6,7)	
	Self-Only	Other than Self-Only				4980H(a) – Failure to Offer Coverage	4980H(b) – Failure to Offer Affordable, Minimum Value Coverage
2017	\$ 7,150	\$ 14,300	Not available	N/A	Not available	\$2,260 (Est.)	\$3,390 (Est.)
2016	\$ 6,850	\$ 13,700	Not available	\$ 27	\$ 2,550	\$ 2,160	\$ 3,240
2015	\$ 6,600	\$ 13,200	\$ 2.17	\$ 44	\$ 2,550	\$ 2,080	\$ 3,120
2014	\$ 6,350	\$ 12,700	\$ 2.08	\$ 63	\$ 2,500	\$ 2,000	\$ 3,000
2013	N/A	N/A	\$ 2.00	N/A	\$ 2,500	N/A	N/A
2012	N/A	N/A	\$ 1.00	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) Applies on a plan year basis
 - (6) Applies on a calendar year basis
 - (7) 2015 and later assessment amounts have not been released. Estimate based on increase in average per capita premium for U.S. health insurance coverage as determined by HHS
- N/A – Not applicable

Authors

Richard Stover, FSA, MAAA
Mary Harrison, JD

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