

FAQS ABOUT AFFORDABLE CARE ACT IMPLEMENTATION PART 46

June 4, 2021

Set out below are additional Frequently Asked Questions (FAQs) regarding implementation of the Affordable Care Act. These FAQs have been prepared jointly by the Departments of Labor, Health and Human Services (HHS), and the Treasury (collectively, the Departments). Like previously issued FAQs (available at <http://www.dol.gov/ebsa/healthreform/> and https://www.cms.gov/ccio/resources/fact-sheets-and-faqs#Affordable_Care_Act), these FAQs answer questions from stakeholders to help people understand the law and promote compliance.

Limitations on Cost Sharing under the Affordable Care Act

Public Health Service Act (PHS Act) section 2707(b), as added by the Affordable Care Act, provides that all non-grandfathered group health plans, including non-grandfathered self-insured and insured small and large group market health plans, shall ensure that any annual cost sharing imposed under the plan does not exceed the limitations provided for under section 1302(c)(1) of the Affordable Care Act.¹ Under section 1302(c)(1), an enrollee's cost sharing for a plan year for essential health benefits is limited. This annual limitation also applies to non-grandfathered health insurance coverage offered in the individual and small group market through the essential health benefits requirements of PHS Act section 2707(a).

For plan or policy years beginning in 2014, the maximum annual limitation on an individual's cost sharing under Affordable Care Act section 1302(c)(1) (sometimes called the maximum out-of-pocket limit or MOOP limit) was set by reference to section 223(c)(2)(A)(ii) of the Internal Revenue Code. For plan or policy years thereafter, the maximum out-of-pocket limit is increased by the premium adjustment percentage described under Affordable Care Act section 1302(c)(4). For plan or policy years beginning in 2021, the maximum annual limitation on cost sharing is \$8,550 for self-only coverage and \$17,100 for other than self-only coverage.

In the proposed HHS Notice of Benefit and Payment Parameters (NBPP) for 2022² (Proposed 2022 NBPP), HHS proposed new values for, among other things, the premium adjustment percentage and maximum annual limitation on cost sharing for the 2022 plan year. The proposed 2022 plan year maximum annual limitation on cost sharing, if finalized, would have been \$9,100 for self-only coverage and \$18,200 for other than self-only coverage.³ However, HHS did not finalize these values as proposed, and instead finalized a change in the calculation of the premium adjustment percentage and cost-sharing parameters that ultimately lowered the final values for the maximum annual limitation on cost sharing for self-only and other than self-only coverage for the 2022 plan year. The Departments are issuing these FAQs to help ensure that

¹ See FAQs about Affordable Care Act Implementation Part XXVII, available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-xxvii.pdf> and <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/ACA-FAQs-Part-XXVII-MOOP-2706-FINAL.pdf>.

² 85 FR 78572 (Dec. 4, 2020).

³ *Id.* at 78633.

plans and issuers are aware of the final values for the premium adjustment percentage and maximum annual limitation on cost sharing for the 2022 plan year.

Q1: What is the maximum out-of-pocket limit for plan years beginning on or after January 1, 2022?

The maximum annual limitation on cost sharing for the 2022 plan year will be \$8,700 for self-only coverage, and \$17,400 for other than self-only coverage.⁴

Q2: Why did HHS finalize different maximum out-of-pocket limits for the 2022 plan year from the ones that were proposed?

In response to the Proposed 2022 NBPP, HHS received public comments objecting to the method used to calculate the proposed premium adjustment percentage. This methodology, set forth in the 2020 NBPP,⁵ utilizes National Health Expenditure Accounts (NHEA) estimates of private health insurance premiums for the private health insurance market (excluding Medigap and the medical portion of property and casualty insurance) as a measure of premium growth. Commenters expressed concern, among other things, that the use of a measure that includes individual market premiums has led to more rapid increases in consumer costs than would have occurred had HHS retained the method used to calculate the premium adjustment percentage prior to the 2020 plan year. Commenters requested that HHS readopt the pre-2020 methodology, which used NHEA estimates of employer-sponsored insurance (ESI) premiums as a measure of premium growth. HHS agreed with commenters and in the HHS Notice of Benefit and Payment Parameters for 2022 and Pharmacy Benefit Manager Standards final rule,⁶ HHS finalized a re-adoption of the NHEA ESI premium measure to calculate the premium adjustment percentage and other cost-sharing parameters, including the maximum annual limitation on cost sharing, for the 2022 plan year and beyond. The finalization of the ESI-based calculation resulted in the maximum annual limitation on cost sharing set forth in Q&A 1 for the 2022 plan year.

⁴ 86 FR 24140, 24235 (May 5, 2021).

⁵ 84 FR 17454, 17537-17541 (Apr. 25, 2019).

⁶ 86 FR 24140.