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REFORM UPDATE

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# FREQUENTLY ASKED QUESTIONS (FAQS) ON OUT-OF-POCKET LIMITS AND PROVIDER NONDISCRIMINATION RULES

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Another set of FAQs was published jointly by the Departments of Labor (DOL), Health and Human Service (DHHS), and the Treasury. These FAQs address the embedded out-of-pocket limit and the provider nondiscrimination provisions of the Affordable Care Act (ACA).

## LIMITATIONS ON COST-SHARING UNDER THE ACA

The ACA set the maximum out-of-pocket limits for essential health benefits, which apply to non-grandfathered individual and group health plans. The limits, which initially applied to plan years beginning in 2014, are indexed annually. The limits only need to apply to the in-network level of benefits. All cost-sharing associated with essential health benefits must apply to the annual out-of-pocket limits.

The limits for 2015 and 2016 are shown below. (Please note that the limits for qualified high-deductible health plans are lower than these amounts.)

| | 2015 | 2016 |
|---|---|---|
| **Single** | $6,600 | $6,850 |
| **Family** | $13,200 | $13,700 |

In recent guidance, the Departments indicated that the single out-of-pocket limit needs to be embedded in the family out-of-pocket limit. (This guidance was addressed in our *Reform Update* at http://mcgrawwentworth.com/wp-content/uploads/Reform_Update_102.pdf.) It was not clear, however, whether the embedded out-of-pocket limits would apply to self-funded plans.

These FAQs confirm that the embedded out-of-pocket maximums apply to all group health plans, insured or self-funded. It also confirms that the single out-of-pocket maximum applies to any covered individual, even if the individual is enrolled in family coverage.

An example of how the embedded out-of-pocket maximum would work is provided in the FAQs. Assume a family of four is enrolled for family coverage under a group health plan in 2016. The plan's family out-of-pocket limit is set at $13,000 for the year. (This is less than the 2016 maximum limit of $13,700.) In-network claims (essential health benefits) for the family members during 2016 are as follows:

- Individual 1 - $10,000
- Individual 2 - $3,000
- Individual 3 - $3,000
- Individual 4 - $3,000

With an embedded single out-of-pocket limit, the first individual would have his or her cost-sharing capped at $6,850 during the year. Once that limit is met, the plan would pay 100 percent of the remaining $2,150 in claims. When you add all of the eligible claims together ($6,850 + $3,000 + 3,000 + $3,000), the family's claims for the year would total $15,850, which exceeds the $13,000 family out-of-pocket limit. The plan would, therefore, have to pay 100 percent of the $2,850 in claims that exceeds the plan's annual family out-of-pocket limit.

The FAQs confirm that the requirement to embed the single out-of-pocket maximum applies to plans as of the first day of their first plan year beginning on or after January 1, 2016.

## PROVIDER NONDISCRIMINATION

The ACA includes a provision that a group health plan shall not discriminate with respect to participation in a health plan against any health care provider who is acting within the scope of his or her license or certification in the state. The Departments have published a FAQ on this topic, but there is no meaningful guidance to date. They had requested feedback on how to address this requirement through legislation, and the response was overwhelming.

At this point, the Departments will not take any enforcement action against a health plan that uses a good faith, reasonable interpretation of the statute language. They also rescinded their FAQ, Question 2 in Implementation FAQs Part XV. This FAQ was addressed in our *Reform Update* at http://www.mcgrawwentworth.com/Reform_Update/2013/Reform_Update_65.pdf.