

FEDERAL AGENCIES DEFER RULE REQUIRING CREDITING DRUG COUPONS TOWARDS HEALTH PLAN COST SHARING

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Under new guidance issued on August 26, 2019, the three federal agencies charged with implementing the Affordable Care Act have announced they will not enforce a rule requiring the crediting of drug manufacturer coupons towards health plan annual out-of-pocket maximums in situations where no generic equivalent is available.

Previously, the Department of Health and Human Services published the Notice of Benefit and Payment Parameters for 2020 (“NBPP”). The NBPP included a rule permitting health plans to exclude the value of drug manufacturers’ coupons from the calculation of annual cost sharing limits when a medically appropriate generic equivalent is available. Per the preambles to the NBPP, the converse was also true, that health plans must credit drug discounts towards annual out-of-pocket maximums when no generic equivalent is available.

This NBPP guidance on the application of drug coupons towards health plan cost sharing limits has now been put on hold due to a potential conflict with existing IRS guidance on the topic. In 2004, the IRS issued guidance (Notice 2004-50, Q&A-9) stating that drug discounts would not disqualify an individual from being HSA-eligible provided that the Plan disregarded the drug discount in determining whether the annual deductible was satisfied.

Thus, the IRS would require the value of the discount to be ignored in determining whether the annual HDHP deductible was satisfied. In contrast, the HHS notice would require that the drug discount be applied to determine if the annual out-of-pocket maximum was met in situations where no generic is available.

To address this potentially conflicting guidance and to allow the three agencies to issue new guidance about the effect of drug manufacturer discounts on plan cost sharing limitations, the agencies have issued temporary non-enforcement relief. Until the NBPP for 2021 is effective or other guidance is issued, health plans may continue to exclude the value of drug coupons from the calculation of annual cost sharing limits, including in situations where no generic equivalent is available.

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