

New Health Plan Requirements and Other Updates

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This Advisory provides a summary of recent developments impacting Affordable Care Act (“ACA”) requirements applicable to employers, as well as other recent changes impacting employer-sponsored health plans.

ACA Affordability Threshold Decrease

Employer-sponsored health plans will satisfy the ACA affordability requirement in 2022 only if the lowest-cost, self-only coverage option offered under the plan does not exceed 9.61% of an employee’s household income, down from 9.83% in 2021. This means that a plan that was affordable in 2021 may not be in 2022, even without any increase in premiums. Employers should confirm that their health plans will remain affordable for the 2022 plan year under the new lower threshold.

Advanced Explanation of Benefits (EOBs)

Effective for plan years beginning on or after January 1, 2022, plans and insurers, within one business day after receiving a provider’s good faith estimate of the expected charge to the plan or insurer for an item or service (as required under the No Surprises Act), must provide participants and beneficiaries with a notice containing various pieces of information, including the following:

- For in-network providers or facilities, the plan’s contracted rate for the item or service, based on the billing and diagnostic codes furnished by the provider or facility;
- For out-of-network providers or facilities, a description of how the participant or beneficiary can obtain information about the plan’s in-network providers or facilities (if any); and
- A good faith estimate of the amount of cost-sharing for which the participant or beneficiary would be responsible concerning the item or service.

The Departments of Labor, Health and Human Services, and the Treasury (the “Departments”) have announced that they will not issue regulations addressing these advanced EOB requirements before the effective date of January 1, 2022 and will defer enforcement until they have done so. However, plans should prepare to meet these requirements as soon as possible, as doing so may require substantial effort, including the engagement of third-party administrators (TPAs) to provide disclosures.

Price Transparency Rules

Under final regulations issued by the Departments to implement price transparency requirements

under the ACA, group health plans and health insurers will need to disclose information on a public website (in separate machine-readable files) regarding:

- In-network provider rates for covered items and services;
- Out-of-network allowed amounts and billed charges for covered items and services; and
- Negotiated rates and historical net prices for covered prescription drugs.

For plan years beginning on or after January 1, 2022, the Departments will defer enforcement of the first two items until July 1, 2022 and the third item pending further rulemaking. However, as with the advanced EOBs above, plans should prepare to meet these requirements as soon as possible, as doing so may require substantial effort, including the engagement of TPAs to provide disclosures.

The rules also require health plans and insurers to provide a price comparison tool by telephone and through the plan's or insurer's website that would allow participants to compare their portion of cost-sharing under the plan for particular services and items for the plan year (with regard to specific geographic regions and participating providers under the plan or coverage). The Departments will defer enforcement of this provision until 2023.

Mental Health Parity and Addiction Equity Act (MHPAEA) Compliance

The DOL has been auditing companies for MHPAEA compliance, particularly with respect to non-quantitative treatment limitations (NQTLs). Group health plans offering both medical/surgical benefits and mental health/substance use disorder benefits must conduct a detailed comparative analysis of the design and application of any NQTLs and be able to produce documentation of such analysis upon request by the Departments or plan participants. While plan sponsors of fully-insured health plans may rely on their insurance carriers to prepare the analysis, plan sponsors of self-insured health plans will be responsible for producing their own. They should therefore:

- Work with their TPAs to ensure that an NQTL analysis has been prepared and documented;
- Review the analysis for compliance with the mental health parity requirements; and
- Work with ERISA counsel to develop a plan for responding to a DOL audit.

Outbreak Period

Employers should remember that the outbreak period rules are still in effect, as described in our client advisories of [May 6, 2020](#), [February 11, 2021](#), and [March 3, 2021](#).

State of Washington Partnership Access Lines (WAPAL) Funding Program

The state of Washington is requiring health insurance carriers and employers that sponsor self-funded health plans covering Washington residents to pay a quarterly fee to support the WAPAL Funding Program, which assists medical providers with managing patients' mental health needs. While health insurance carriers are responsible for the fee for fully insured groups, employers that sponsor self-funded plans will need to check with their TPAs to determine which party is responsible for paying. Currently, the fee is \$0.13 per covered life per month, and the first payment was due on November 15, 2021.

Illinois Consumer Coverage Disclosure Act

Effective August 27, 2021, employers with employees in Illinois are required to disclose to group

health plan participants a written list of the covered benefits included in the group health insurance coverage in a format that easily compares those covered benefits with the essential health insurance benefits required of individual health insurance coverage regulated by the state of Illinois. This information must be provided to employees upon hire, annually, and when requested. Failure to meet the disclosure requirements may result in a penalty of \$1,000 for the first offense, up to \$3,000 for the second offense, and up to \$5,000 for a third or subsequent offense (for employers with 4 or more employees).