

ACA COMPLIANCE BULLETIN



HHS Issues Proposed Notice of Benefit and Payment Parameters for 2021

On Jan. 31, 2020, the Department of Health and Human Services (HHS) published its [proposed Notice of Benefit and Payment Parameters for 2021](#). This proposed rule describes benefit and payment parameters under the Affordable Care Act (ACA) that would be applicable for the 2021 benefit year. Proposed standards included in the rule relate to:

- Annual limitations on cost-sharing;
- The individual mandate's affordability exemption; and
- Special enrollment periods (SEPs) in the Exchanges.

The proposed rule is also seeking comments on additional issues, such as a new automatic re-enrollment process through the Exchange for consumers with \$0 plans after premium tax credits are applied. In an effort to reduce eligibility errors and potential government misspending, the rule proposes that a consumer's premium tax credit would be discontinued or reduced for a new plan year unless the consumer returns to the Exchange during the annual open enrollment period to update their application and receive a new eligibility determination.

Action Steps

Comments on the proposed rule must be submitted by **March 2, 2020**.

If finalized, the provisions included in this proposed rule would generally apply for the 2021 benefit year. Employers may not rely on these proposals, and should keep in mind that these proposals may change before being finalized.

Highlights

Out-of-Pocket Maximum

The ACA's out-of-pocket maximum limit would increase to \$8,550 (self-only coverage) and \$17,100 (family coverage).

Affordability Percentage

The required contribution percentage for the individual mandate's affordability exemption would decrease for 2021.

Additional Issues

HHS requests comments on additional issues to address in the future.

Important Dates

Jan. 31, 2020

The 2021 Proposed Notice of Benefit and Payment Parameters was issued.

2021 Benefit Year

If finalized, the changes included in the proposed rule would generally apply for the 2021 benefit year.



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Annual Limitations on Cost-Sharing

The ACA requires non-grandfathered plans to comply with an overall annual limit—or an out-of-pocket maximum—on essential health benefits (EHB). The ACA requires the out-of-pocket maximum to be updated annually based on the percent increase in average premiums per person for health insurance coverage.

- For 2016, the out-of-pocket maximum was **\$6,850 for self-only coverage** and **\$13,700 for family coverage**.
- For 2017, the out-of-pocket maximum was **\$7,150 for self-only coverage** and **\$14,300 for family coverage**.
- For 2018, the out-of-pocket maximum was **\$7,350 for self-only coverage** and **\$14,700 for family coverage**.
- For 2019, the out-of-pocket maximum was **\$7,900 for self-only coverage** and **\$15,800 for family coverage**.
- For 2020, the out-of-pocket maximum is **\$8,150 for self-only coverage** and **\$16,300 for family coverage**.

Under the proposed rule, the out-of-pocket maximum would increase for 2021 to **\$8,550 for self-only coverage** and **\$17,100 for family coverage**.

Individual Mandate's Affordability Exemption

Under the ACA, individuals who lack access to affordable minimum essential coverage (MEC) are exempt from the individual mandate penalty. The 2018 tax reform bill, the [Tax Cuts and Jobs Act](#), reduced the ACA's individual mandate penalty to zero, effective beginning in 2019. As a result, individuals will no longer be penalized for failing to obtain acceptable health insurance coverage. However, despite this repeal, the proposed rule notes that individuals may still need to seek this exemption for 2019 and future years (for example, in order to be eligible for catastrophic coverage).

For purposes of this exemption, coverage is considered affordable for an employee if the employee's required contribution for the lowest-cost, self-only coverage does not exceed 8% of household income, adjusted annually, as follows:

- For 2015, the required contribution percentage was **8.05% of household income**.
- For 2016, the required contribution percentage was **8.13% of household income**.
- For 2017, the required contribution percentage was **8.16% of household income**.
- For 2018, the required contribution percentage **decreased** to **8.05% of household income**.
- For 2019, the required contribution percentage **increased** to **8.3% of household income**.
- For 2020, the required contribution percentage **decreased** to **8.24% of household income**.

Under the proposed rule, the required contribution percentage would **increase in 2021 by 0.03%**. The proposed rule provides that, for 2021, an individual would be exempt from the individual mandate penalty if he or she must pay more than **8.27% of his or her household income** for MEC.



Special Enrollment Periods through the Exchanges

Under the Exchanges, certain special enrollment periods (SEPs) are available for people who lose health insurance during the year or experience other qualifying events. The 2021 proposed rule would revise certain existing rules related to SEPs, as follows:

- The proposed rule would allow Exchange enrollees (and their dependents) who are enrolled in silver plans and become newly ineligible for cost-sharing reductions to change to a qualified health plan (QHP) one metal level higher or lower, if they choose.
- The proposed rule would require Exchanges to apply plan category limitations to dependents who are currently enrolled in Exchange coverage and whose non-dependent household member qualifies for an SEP to newly enroll in coverage and seeks to enroll in a plan with the dependent.
- The proposed rule would shorten the time between the date a consumer enrolls in a plan through certain SEPs and the effective date of that plan, and would revert to the single retroactive effective date and binder payment rule that provides consumers who have an SEP with a retroactive effective date the option to pay one month's premium and only receive prospective coverage.
- The proposed rule would allow individuals and their dependents who are provided a qualified small employer health reimbursement arrangement (QSEHRA) with a non-calendar year plan year to qualify for the existing SEP for individuals enrolled in any non-calendar year group health plan or individual health insurance coverage, based on the last day of their plan year.

Automatic Re-Enrollment

The proposed rule requests comments on new automatic re-enrollment processes for consumers with \$0 plans after the premium tax credit is applied. For example, the proposed rule requests comments on a process under which a consumer's premium tax credit would be discontinued or reduced for a new plan year unless the consumer returns to the Exchange during the annual open enrollment period to update their application and receive a new determination of their eligibility for premium tax credits.

According to HHS, this change could reduce the risk of incorrect premium tax credit expenditures, some of which cannot be recovered through the reconciliation process due to statutory caps. Comments must be submitted by March 2, 2020.

Source: Department of Health and Human Services