

New FAQs Issued on ACA's Cost-Sharing Limitations for Plans Using Reference-Based Pricing

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On October 10, 2014, the Department of the Treasury, Department of Labor and Department of Health and Human Services (collectively the "Departments") jointly issued [FAQs Part XXI](#) ("FAQs"). The FAQs address compliance with the annual cost-sharing limitations under the Patient Protection and Affordable Care Act (the "ACA") for non-grandfathered health plans using reference-based pricing.

For plan years beginning on and after January 1, 2014, the ACA requires non-grandfathered health plans to ensure that any annual cost-sharing amounts for covered essential health benefits do not exceed certain maximum out-of-pocket limits ("MOOPs"). Under the Section 2707(b) of the Public Health Service Act, as added by the ACA, if a non-grandfathered plan imposes cost-sharing (*i.e.*, deductibles, coinsurance, copayments, or other similar charges), such cost-sharing may not exceed the limits provided under Section 1302(c)(1) of the ACA. For plan years beginning in 2015, those limits for in-network charges are \$6,600 for self-only coverage and \$13,200 for all other levels of coverage. The new FAQs clarify that a plan using reference-based pricing will not violate the ACA's MOOP rules if the plan design includes a reasonable method to ensure that participants have sufficient access to quality providers at the reference-based price.

What is reference-based pricing?

To help control costs, some plans have entered into pricing arrangements with certain service providers ("reference-price providers"), in which a plan negotiates with a provider to pay a fixed amount for certain services (*e.g.*, knee replacements) as payment in full. Under this plan design, a participant who uses a reference-price provider for such services would not be required to pay any additional costs for that procedure, but a participant who does not use a reference-price provider would be responsible for any difference in cost between the reference-based price and the health care provider's charges.

Guidance

To address the Departments' concern that a health plan could use reference-based pricing as a "subterfuge for the imposition of otherwise prohibited limitations on coverage," the FAQs set forth the factors for determining whether the plan design provides "a reasonable method" to ensure that participants have sufficient access to quality providers.

Type of Service. To ensure that the plan's provider network includes services from high-quality providers at reduced costs, the reference-based pricing structure should only apply to services for which a participant has enough time to make an informed choice of provider. For example, excluding a participant's out-of-pocket costs for emergency services from the MOOP for providers who do not accept the reference-based price — which is independently prohibited by the ACA — would be unreasonable.

Reasonable Access. The plan should ensure that participants and beneficiaries have access to an adequate number of reference-price providers, taking into consideration adequacy measures developed by the states, a provider's geographic location, and wait times.

Quality Standards. The plan should ensure that a sufficient number of reference-price providers meet reasonable quality standards.

Exceptions Process. The plan should develop a process for treating services rendered by a provider that does not accept the reference-based price as if those services were provided by a reference-price provider in cases where participants cannot access a reference-price provider or using the reference-price provider would compromise the quality of services received.

Disclosure. The plan should automatically provide participants with information regarding the plan's reference-based pricing structure, including a list of applicable services and the exceptions process. Upon request, the plan should also provide participants with a list of reference-price providers and providers that will accept a price above the reference-based price for each service, as well as information on the reference-price process and underlying data used to ensure that an adequate number of reference-price providers meet reasonable quality standards.

We note that the FAQs state that the Departments will continue to evaluate the use of reference-based pricing and may issue additional guidance. If you have any questions regarding the foregoing, please contact the attorney with whom you normally work or the author of this article.

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