Proposed HHS Rule: Considerations for Plan Sponsors

Issued date: 04/02/25

On March 10, 2025, the Department of Health and Human Services ("HHS") released the Patient Protection and Affordable Care Act; Marketplace Integrity and Affordability Proposed Rule ("Rule"). While much of the Rule is focused on individual and small group Marketplaces, a few key changes may indirectly impact employer sponsored plans.

Although the Rule is still in the proposed stage and subject to change, employers should take note of the following key provisions that could affect benefits administration and employee decision-making for plan year 2026.

Key Proposed Changes for 2026

Shortened ACA Marketplace Open Enrollment Period

Historically, the annual open enrollment period ("OE") for the ACA Marketplace plans runs from November 1 through January 15. The proposed rules suggest shortening the OE for 2026, which would run from November 1 through December 15, 2025 (this is for policies available on and off the Marketplace). It is important to note that a shortened OE window may impact employers offering individual coverage health reimbursement arrangements ("ICHRAs") effective January 1, 2026. If finalized "as is," employers offering ICHRAs should be strategic with their OE periods where employees will have a shorter window to select individual coverage from the Marketplace for 2026.

Changes to Essential Health Benefits Coverage for Sex-Trait Modification Services

The Rule proposes removing the current requirement that non-grandfathered individual and small group market plans subject to essential health benefits ("EHBs") must include sex-trait modification services as part of the EHBs. The Rule does not provide a definition for "sex-trait modification."

The Rule does not prohibit employer sponsored plans from voluntarily covering these services, nor does it prevent states from requiring coverage under state mandated benefit rules. Currently, five states (California, Colorado, New Mexico, Vermont and Washington) include some level of sex-trait modification coverage in their EHB benchmark plans. Forty states exclude this coverage under their current EHB benchmark plans and six states do not explicitly include or exclude such coverage.

Employers sponsoring fully insured small group plans should review state specific requirements as state mandates will still apply. While large group insured plans and self-funded plans are not required to cover EHBs, to the extent the plan provides coverage for EHB the plan is prohibited from imposing lifetime and annual dollar limits on EHBs. In addition, any cost-sharing for EHBs provided in-network must accumulate to the annual out-of-pocket maximum.

Cost-Sharing & Affordability Adjustments

The Rule suggests an alternative calculation method for the 2026 out of pocket maximums ("OOPMs") and cost sharing. OOPMs apply to non-grandfathered health plans, including employer sponsored plans, and represent the maximum amounts an enrollee must pay for covered EHBs in-network in a given plan year before the plan covers 100% of eligible expenses. Under existing ACA requirements, OOPMs are indexed annually using the premium adjustment percentage ("PAP") which reflects the growth of private health insurance premiums.

In October 2024, HHS announced the OOPM for plan years beginning on or after January 1, 2025 as:

- $10,150 for self-only coverage; and
- $20,300 for coverage other than self-only.

Under the modification proposed by this rule, the 2026 OOPM would be higher than previously anticipated. Specifically, as proposed the OOPM would increase to:

- $10,600 for self-only coverage; and
- $21,200 for coverage other than self-only.

These proposed adjustments to the OOPMs could affect employer plan designs for 2026.

Employer Action

The Rule is currently proposed guidance that still needs to be finalized. Employers should await further guidance.