



Date: December 28, 2021

Subject: Premium Adjustment Percentage, Maximum Annual Limitation on Cost Sharing, Reduced Maximum Annual Limitation on Cost Sharing, and Required Contribution Percentage for the 2023 Benefit Year

I. Purpose

As finalized in the HHS Notice of Benefit and Payment Parameters for 2022 and Pharmacy Benefit Manager Standards (2022 Payment Notice Part 2),¹ beginning with the 2023 benefit year, the Department of Health and Human Services (HHS) will publish the premium adjustment percentage, maximum annual limitation on cost sharing, reduced maximum annual limitation on cost sharing, and required contribution percentage (payment parameters) in guidance by January of the year preceding the applicable benefit year using the most recent National Health Expenditure Accounts (NHEA) income and premium data that is available at the time of publication. HHS is issuing this guidance to provide these payment parameters for the 2023 benefit year.²

II. Background

Section 1302(c)(4) of the Patient Protection and Affordable Care Act (ACA) directs the Secretary of HHS to determine an annual premium adjustment percentage, a measure of premium growth that is used to set three other parameters detailed in the ACA: (1) the maximum annual limitation on cost sharing (defined at 45 CFR 156.130(a)); (2) the required contribution percentage used to determine eligibility for certain exemptions under section 5000A of the Internal Revenue Code (the Code) (defined at 45 CFR 155.605(d)(2)); and (3) the employer shared responsibility payment amounts under section 4980H(a) and (b) of the Code (see section 4980H(c)(5) of the Code).

¹ 86 FR 24140 (May 5, 2021).

² Pursuant to the policy finalized in the 2022 Payment Notice and codified at 45 CFR 156.130(e), HHS may publish the premium adjustment percentage, maximum annual limitation on cost sharing, reduced maximum annual limitation on cost sharing and required contribution percentage in guidance by January of the year preceding the applicable benefit year. The Good Guidance Practices Final Rule, (85 FR 78,770 (Dec. 7, 2020)) took effect on January 6, 2021, and specifies limitations on and requirements for HHS issuance of guidance. Because the payment parameters are being published in this guidance document, HHS has included the appropriate citations to the statutes and regulations that direct the calculations of these parameters, and that provide authority for the calculations that this guidance implements. In addition, HHS includes the following disclaimer to achieve compliance with Good Guidance standards: The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under law.

Section 1302(c)(4) of the ACA and 45 CFR 156.130(e) provide that the premium adjustment percentage is the percentage (if any) by which the average per capita premium for health insurance coverage for the preceding calendar year exceeds such average per capita premium for health insurance for 2013.

In the 2022 Payment Notice Part 2, HHS established that the average per capita premium will be based on NHEA estimates of employer-sponsored insurance (ESI) premiums and finalized that, beginning with the 2023 benefit year, HHS would release the payment parameters in guidance by January of the year preceding the applicable benefit year.³ HHS also established that the premium adjustment percentage, maximum annual limitation on cost sharing, reduced maximum annual limitation on cost sharing, and required contribution percentage would be calculated using the most recent NHEA income and premium data that is available at the time these values are published in guidance or, if applicable, rulemaking.

For the 2023 benefit year, HHS is not proposing changes to the methodology to calculate the premium adjustment percentage or related parameters. As such, we are releasing these parameters in this guidance.

III. NHEA Data Years

For the calculation of the 2023 benefit year payment parameters, we are using the NHEA Projections 2019-2028.⁴ This data source, which reflects the most recent projections available, is the same as that used for the 2022 benefit year calculations, because more recent NHEA projections have not yet been published as of the date this document is being issued.

IV. Premium Adjustment Percentage for 2023

Using the NHEA Projections 2019-2028, the premium adjustment percentage for 2023 is the percentage (if any) by which the NHEA Projections 2019-2028 value for per enrollee ESI premiums for 2022 (\$7,292) exceeds the NHEA Projections 2019-2028 value for per enrollee ESI premiums for 2013 (\$5,061) carried out to ten significant digits. Using this formula, the premium adjustment percentage for the 2023 benefit year is 1.4408219719 ($\$7,292/\$5,061$), which represents an increase in ESI premiums of approximately 44.1 percent over the period from 2013 to 2022. This premium adjustment percentage will be used to index the maximum annual limitation on cost sharing and the required contribution percentage used to determine eligibility for certain exemptions under section 5000A of the Code. It will also be used to index the employer shared responsibility payment amounts under section 4980H(a) and (b) of the Code.

V. Maximum Annual Limitation on Cost Sharing for 2023

Under 45 CFR 156.130(a)(2), for the 2023 calendar year, cost sharing for self-only coverage may not exceed the dollar limit for calendar year 2014 increased by an amount equal to the product of that amount and the premium adjustment percentage for 2023. For other than self-only coverage, the limit is twice the dollar limit for self-only coverage. Under § 156.130(d), these amounts must be rounded down to the next

³ We note that if HHS proposes changes to the methodology used to calculate these values for a future benefit year, we would publish the annual premium adjustment percentage in rulemaking and then would resume publication in guidance for subsequent benefit years when no methodological changes are proposed.

⁴ Available at: <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsProjected>.

lowest multiple of \$50. Using the premium adjustment percentage for 2023 of 1.4408219719, and the 2014 maximum annual limitation on cost sharing of \$6,350 for self-only coverage, which was published by the Internal Revenue Service on May 2, 2013,⁵ the 2023 maximum annual limitation on cost sharing is \$9,100 for self-only coverage and \$18,200 for other than self-only coverage. This represents an approximately 4.6 percent increase above the 2022 parameters of \$8,700 for self-only coverage and \$17,400 for other than self-only coverage.

VI. Reduced Maximum Annual Limitation on Cost Sharing for 2023

The reduced maximum annual limitations on cost sharing for cost-sharing plan variations are determined by the methodology we established beginning with the 2014 benefit year. In the 2014 Payment Notice,⁶ we established standards related to the provision of these cost-sharing reductions (CSRs). Specifically, in 45 CFR part 156, subpart E, we specified that qualified health plan (QHP) issuers must provide CSRs by developing plan variations, which are separate cost-sharing structures for each eligibility category that change how the cost sharing required under the QHP is to be shared between the enrollee and the federal government. At 45 CFR 156.420(a), we detailed the structure of these plan variations and specified that QHP issuers must ensure that each silver plan variation has an annual limitation on cost sharing no greater than the applicable reduced maximum annual limitation on cost sharing specified in the annual HHS guidance or HHS notice of benefit and payment parameters. Although the amount of the reduction in the maximum annual limitation on cost sharing is specified in section 1402(c)(1)(A) of the ACA, section 1402(c)(1)(B)(ii) of the ACA states that the Secretary may adjust the cost sharing limits to ensure that the resulting limits do not cause the actuarial value (AV) of the health plans to exceed the levels specified in section 1402(c)(1)(B)(i) of the ACA (that is, 70 percent, 73 percent, 87 percent, or 94 percent, depending on the income of the enrollee).

We note that for the 2023 benefit year, as described in 45 CFR 156.135(d), states are permitted to request HHS's approval for state-specific datasets for use as the standard population to calculate AV. No state submitted a dataset by the September 1, 2021 deadline.

As indicated in Table 1, we are finalizing the values of the reduced maximum annual limitation on cost sharing at \$3,000 for enrollees with household income greater than or equal to 100 percent of the federal poverty level (FPL) and less than or equal to 150 percent FPL, \$3,000 for enrollees with household income greater than 150 percent FPL and less than or equal to 200 percent FPL, and \$7,250 for enrollees with household income greater than 200 and less than or equal to 250 percent FPL, as calculated using the 2023 premium adjustment percentage and maximum annual limitation on cost sharing.

⁵ See Revenue Procedure 2013-25, 2013-21 IRB 1110. <http://www.irs.gov/pub/irs-drop/rp-13-25.pdf>.

⁶ Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2014 and Amendments to the HHS Notice of Benefit and Payment Parameters for 2014; 78 FR 15409 (Mar. 11, 2013).

TABLE 1: Reductions in Maximum Annual Limitation on Cost Sharing for 2023

Eligibility Category	Reduced Maximum Annual Limitation on Cost Sharing for Self-only Coverage for 2023	Reduced Maximum Annual Limitation on Cost Sharing for Other than Self-only Coverage for 2023
Individuals eligible for CSRs under § 155.305(g)(2)(i) (household income greater than or equal to 100 and less than or equal to 150 percent of FPL)	\$3,000	\$6,000
Individuals eligible for CSRs under § 155.305(g)(2)(ii) (household income greater than 150 and less than or equal to 200 percent of FPL)	\$3,000	\$6,000
Individuals eligible for CSRs under § 155.305(g)(2)(iii) (household income greater than 200 and less than or equal to 250 percent of FPL)	\$7,250	\$14,500

To confirm consistency with past results of the analysis for the reduced maximum annual limitation on cost sharing, we tested the updated reductions to the 2023 maximum annual limitation for cost sharing (\$9,100) that we are publishing in this guidance and we analyzed the impact of the reductions specified in the ACA on the AV levels of the test plans. For 2023, the test silver level QHPs included a preferred provider organization (PPO) with typical cost sharing structure (\$9,100 annual limitation on cost sharing, \$2,650 deductible, and 25 percent in-network coinsurance rate); a PPO with a lower annual limitation on cost sharing (\$8,600 annual limitation on cost sharing, \$2,800 deductible, and 25 percent in-network coinsurance rate); and a health maintenance organization (HMO) (\$9,100 annual limitation on cost sharing, \$4,200 deductible, 30 percent in-network coinsurance rate, and the following services with copayments that are not subject to the deductible or coinsurance: \$1,500 inpatient stay per day, \$600 emergency department visit, \$40 primary care office visit, and \$80 specialist office visit). All three test QHPs meet the AV requirements for silver level health plans based on the parameters that we are publishing here.

We then entered these test plans into a draft version of the 2023 benefit year AV Calculator and observed how the reductions in the maximum annual limitation on cost sharing specified in the ACA affected the AVs of the plans. We found that the reduction in the maximum annual limitation on cost sharing specified in the ACA for enrollees with a household income greater than or equal to 100 percent FPL and less than or equal to 150 percent of FPL (2/3 reduction in the maximum annual limitation on cost sharing), and greater than 150 percent FPL and less than or equal to 200 percent of FPL (2/3 reduction), would not cause the AV of any of the model QHPs to exceed the statutorily specified AV levels.

As with prior years, we continue to find that the reduction in the maximum annual limitation on cost sharing specified in the ACA for enrollees with a household income greater than 200 percent FPL and less than or equal to 250 percent of FPL (1/2 reduction) would cause the AVs of two of the three test QHPs to exceed the specified AV level of 73 percent. Furthermore, as with prior years, for individuals with household incomes greater than 250 and less than or equal to 400 percent of FPL, without any change in other forms of cost sharing, the statutory reductions in the maximum annual limitation on cost sharing would cause an increase in AV that exceeds the maximum 70 percent level set forth in the statute.

Therefore, we continue to reduce the maximum annual limitation on cost sharing by 2/3 for enrollees with a household income greater than or equal to 100 percent FPL and less than or equal to 200 percent of FPL, 1/5 for enrollees with a household income greater than 200 percent FPL and less than or equal to 250 percent of FPL, and no reduction for individuals with household incomes greater than 250 percent FPL and less than or equal to 400 percent of FPL for the 2023 benefit year. The resulting final 2023 reduced maximum annual limitations on cost sharing are displayed in Table 1 above.

VII. Required Contribution Percentage for 2023

HHS calculates the required contribution percentage for each benefit year using the most recent projections and estimates of premium growth and income growth over the period from 2013 to the preceding calendar year. Accordingly, we are establishing the required contribution percentage for the 2023 benefit year, calculated using income and premium growth data for the 2013 and 2022 calendar years.

Section 5000A of the Code imposes a tax in the form of an individual shared responsibility payment, on non-exempt individuals without minimum essential coverage (MEC) each month. Under 45 CFR 155.605(d)(2), an individual is allowed a coverage exemption (the affordability exemption) for months in which the amount the individual would pay for MEC exceeds a percentage, called the required contribution percentage, of the individual's household income. Although the Tax Cuts and Jobs Act⁷ reduced the individual shared responsibility payment to \$0 for months beginning after December 31, 2018, the required contribution percentage is still used to determine whether individuals above the age of 30 qualify for an affordability exemption that would enable them to enroll in catastrophic coverage under 45 CFR 155.305(h).

The initial 2014 required contribution percentage under section 5000A of the Code was 8 percent. For plan years after 2014, section 5000A(e)(1)(D) of the Code and Treasury regulations at 26 CFR 1.5000A-3(e)(2)(ii) provide that the required contribution percentage is the percentage determined by the Secretary of HHS that reflects the excess of the rate of premium growth between the preceding calendar year and 2013, over the rate of income growth for that period. The excess of the rate of premium growth over the rate of income growth is also used for determining the applicable percentage in section 36B(b)(3)(A)⁸ of the Code and the required contribution percentage in section 36B(c)(2)(C) of the Code.

As the measure of income growth for a calendar year, we established in the 2017 Payment Notice⁹ that we would use NHEA projections of per capita personal income (PI). The rate of income growth for 2023 is the percentage (if any) by which the NHEA Projections 2019–2028 value for per capita PI for the preceding calendar year (\$63,427 for 2022) exceeds the NHEA Projections 2019–2028 value for per capita PI for 2013 (\$44,948), carried out to ten significant digits. Using the 2023 premium adjustment percentage established in this guidance, the excess of the rate of premium growth over the rate of income

⁷ Pub. L. 115-97. (Dec. 22, 2017)

⁸ Section 36B(b)(3)(A)(ii) of the Code generally provides that the applicable percentages are to be adjusted after 2014 to reflect the excess of the rate of premium growth for the preceding year over the rate of income growth for the preceding year. The American Rescue Plan Act of 2021 (Pub. L. 117-2 (Dec. 27, 2020)) amended the Code to temporarily suspend indexing of the applicable percentage table in section 36B(b)(3)(A) for the 2021 and 2022 tax years.

⁹ Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017, 81 FR 12203 (Mar. 8, 2016).

growth for 2013 to 2022 is $1.4408219719 \div 1.4111195159$, or 1.0210488592. This results in the 2023 required contribution percentage under section 5000A of the Code of 8.00×1.0210488592 or 8.17 percent, when rounded to the nearest one-hundredth of one percent, an increase of approximately 0.08 percentage points from 2022 (8.16839-8.09066).

Table 2: Payment Parameters for the 2023 Benefit Year

Area	Metric	Value
Premium Adjustment Percentage	NHEA Projections 2019-2028 value for per enrollee ESI premiums for 2013	\$5,061
	NHEA Projections 2019-2028 value for per enrollee ESI premiums for 2022	\$7,292
	2023 Premium Adjustment Percentage	1.4408219719
	Required Contribution	
Required Contribution	NHEA Projections 2019-2028 value for of per capita personal income for 2013	\$44,948
	NHEA Projections 2019-2028 value for of per capita personal income for 2022	\$63,427
	Income Growth	1.4111195159
	Premium Growth over Income Growth Index	1.0210488592
	2023 Required Contribution Percentage	8.17%
Maximum Annual Limitation on Cost Sharing	2023 Maximum Annual Limitation on Cost Sharing	\$9,100
	2023 Reduced Maximum Annual Limitation on Cost Sharing – household income greater than or equal to 100% and less than or equal to 150% FPL	\$3,000
	2023 Reduced Maximum Annual Limitation on Cost Sharing – household income greater than 150% and less than or equal to 200% FPL	\$3,000
	2023 Reduced Maximum Annual Limitation on Cost Sharing – household income greater than 200% and less than or equal to 250% FPL	\$7,250

Note: NHEA Data Available as of March 24, 2020.¹⁰

¹⁰ For the calculation of the 2023 benefit year premium adjustment percentage, maximum annual limitation on cost sharing, reduced maximum annual limitation on cost sharing, and required contribution percentage, we are using the NHEA Projections 2019-2028, which are the most recent projections that have been released. Available at: <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsProjected>.