

FAQ ABOUT AFFORDABLE CARE ACT IMPLEMENTATION PART 66

April 2, 2024

Set out below is a Frequently Asked Question (FAQ) regarding implementation of certain provisions of the Affordable Care Act (ACA). This FAQ has been prepared jointly by the Departments of Labor, Health and Human Services (HHS), and the Treasury (collectively, the Departments). Like previously issued FAQs (available at <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/aca-implementation-faqs> and <http://www.cms.gov/cciiio/resources/fact-sheets-and-faqs/index.html>), this FAQ answers a question from stakeholders to help people understand the law and promote compliance.

Prohibition on Lifetime and Annual Limits and Annual Limitation on Cost Sharing

Public Health Service Act (PHS Act) section 2711, as added by the ACA, generally prohibits group health plans and health insurance issuers offering group or individual health insurance coverage from imposing lifetime and annual dollar limits on essential health benefits (EHB), as defined under section 1302(b) of the ACA.¹ Under the ACA, self-insured group health plans and large group market plans are not required by PHS Act section 2707(a) to offer EHB; however, to the extent these plans cover EHBs, they must comply with the annual and lifetime prohibitions under PHS Act section 2711. Final regulations implementing PHS Act section 2711 provide that, for plan years beginning on or after January 1, 2020, a plan or issuer that is not required to provide EHB must define EHB, for purposes of the prohibition on lifetime and annual limits, in a manner consistent with an EHB-benchmark plan selected by a State in accordance with 45 CFR 156.111, including coverage of any additional required benefits that are considered EHB consistent with 45 CFR 155.170(a)(2).²

PHS Act section 2707(b), as added by the ACA, provides that non-grandfathered group health plans, including non-grandfathered self-insured and non-grandfathered insured small and large group market health plans, shall ensure that any annual cost sharing imposed under the plan does not exceed the limitations provided for under ACA section 1302(c)(1).³ Under ACA section 1302(c)(1), an enrollee's cost sharing for a plan year for EHB is limited. This annual limitation on cost sharing also applies to non-grandfathered health insurance coverage offered in the

¹ The provisions of PHS Act section 2711 apply to both non-grandfathered and grandfathered group health plans and group or individual health insurance coverage, except the annual limits prohibition does not apply to grandfathered individual health insurance coverage. See 45 CFR 147.140(c)(1).

² 26 CFR 54.9815-2711(c)(2), 29 CFR 2590.715-2711(c)(2), and 45 CFR 147.126(c)(2).

³ The provisions of PHS Act section 2707(b) apply to all non-grandfathered group health plans, including non-grandfathered self-insured and non-grandfathered insured small and large group market plans.

individual and small group market through the EHB requirements of PHS Act section 2707(a). The Departments have previously issued FAQs addressing the annual limitation on cost-sharing.⁴

In the proposed HHS Notice of Benefit and Payment Parameters (NBPP) for 2025 (proposed 2025 NBPP),⁵ HHS proposed to amend 45 CFR 156.122 to codify that prescription drugs in excess of those covered by a State’s EHB-benchmark plan are considered EHB. Because they are EHB, benefits for those prescription drugs would be subject to EHB protections, including the annual limitation on cost sharing and the prohibition on lifetime and annual limits, unless the coverage of the drug is mandated by State action and is in addition to EHB pursuant to 45 CFR 155.170, in which case the drug will not be considered EHB. HHS stated this policy in the preamble to the 2013 Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation Final Rule⁶ and the final HHS NBPP for 2016,⁷ and therefore HHS was of the view that this policy was clearly understood by issuers. However, comments received in response to the EHB Request for Information⁸ issued in 2022 included a significant number of requests from interested parties to clarify the applicability of this policy in rulemaking, particularly as it relates to some plans in the individual, small group, and large group markets that have developed programs to provide coverage of some drugs as “non-EHB,” outside of the terms of the rest of the coverage. After consideration of comments on the proposed 2025 NBPP, HHS is finalizing

⁴ See FAQs About Affordable Care Act Implementation Part XII (Feb. 20, 2013), available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-xii.pdf> and https://www.cms.gov/ccio/resources/fact-sheets-and-faqs/aca_implementation_faqs12; FAQs About Affordable Care Act Implementation (Part XVIII) and Mental Health Parity Implementation (Jan. 9, 2014), available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-xviii.pdf> and https://www.cms.gov/ccio/resources/fact-sheets-and-faqs/aca_implementation_faqs18; FAQs About Affordable Care Act Implementation Part XIX (May 2, 2014), available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-xix.pdf> and https://www.cms.gov/ccio/resources/fact-sheets-and-faqs/aca_implementation_faqs19; FAQs About Affordable Care Act Implementation Part XXI (Oct. 10, 2014), available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-xxi.pdf> and https://www.cms.gov/ccio/resources/fact-sheets-and-faqs/downloads/reference_pricing_faq_101014.pdf; FAQs About Affordable Care Act Implementation Part XXVII (May 26, 2015), available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-xxvii.pdf> and <https://www.cms.gov/ccio/resources/fact-sheets-and-faqs/downloads/aca-faqs-part-xxvii-moop-2706-final.pdf>; FAQs About Affordable Care Act Implementation Part 31 (Apr. 20, 2016), available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-31.pdf> and https://www.cms.gov/ccio/resources/fact-sheets-and-faqs/downloads/faqs-31_final-4-20-16.pdf; FAQs About Affordable Care Act Implementation Part 40 (Aug. 26, 2019), available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-40.pdf> and <https://www.cms.gov/ccio/resources/fact-sheets-and-faqs/downloads/faqs-part-40.pdf>; FAQs About Affordable Care Act Implementation Part 46 (Jun. 4, 2021), available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-46.pdf> and <https://www.cms.gov/ccio/resources/fact-sheets-and-faqs/downloads/faqs-part-46.pdf>; FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 55 (Aug. 19, 2022), available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-55.pdf> and <https://www.cms.gov/files/document/faqs-part-55.pdf>; and FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 60 (Jul. 7, 2023), available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-60.pdf> and <https://www.cms.gov/files/document/faqs-part-60.pdf>.

⁵ 88 FR 82510, 82601 (Nov. 24, 2023).

⁶ 78 FR 12833, 12845 (Feb. 25, 2013).

⁷ 80 FR 10750 (Feb. 27, 2015).

⁸ 87 FR 74097 (Dec. 2, 2022).

the amendment to 45 CFR 156.122 in the final HHS NBPP for 2025 (final 2025 NBPP) with respect to issuers of non-grandfathered individual and small group market plans that are subject to the requirement to provide EHB.

Some commenters on the proposed 2025 NBPP stated that the final rule should make clear whether this policy applies to large group market and self-insured plans. The Departments are issuing this FAQ to address the applicability of this provision in the final 2025 NBPP to self-insured group health plans and large group market plans for purposes of the prohibition on lifetime and annual limits under PHS Act section 2711 and the annual limitation on cost sharing under PHS Act section 2707(b).

Q: Does the policy in the final 2025 NBPP, which provides that prescription drugs in excess of those covered by a State's EHB-benchmark plan are considered EHB, apply to large group market coverage and self-insured plans defining EHB for purposes of the prohibition on lifetime and annual limits under PHS Act section 2711 and the annual limitation on cost sharing under PHS Act section 2707(b)?

As explained in the preamble to the final 2025 NBPP (issued contemporaneously with this FAQ), the proposed 2025 NBPP primarily addressed the application of this policy with respect to issuers of non-grandfathered individual and small group market plans subject to the requirement to provide EHB. The final 2025 NBPP does not address the application of this policy to large group market health plans and self-insured group health plans. The Departments understand the questions raised by commenters with respect to large group market health plans and self-insured group health plans and intend to address the applicability of this policy to those plans in future notice-and-comment rulemaking. Specifically, the Departments intend to propose rulemaking that would align the standards applicable to large group market health plans and self-insured group health plans with those applicable to individual and small group market plans, so that all group health plans and health insurance coverage subject to sections 2711 and 2707(b) of the PHS Act, as applicable, would be required to treat prescription drugs covered by the plan or coverage in excess of the applicable EHB-benchmark plan as EHB for purposes of the prohibition of lifetime and annual limits and the annual limitation on cost sharing, which would further strengthen the consumer protections in the ACA.