



ACA COMPLIANCE BULLETIN

HIGHLIGHTS

- The ACA's out-of-pocket maximum limit increases to \$8,150 (self-only coverage) and \$16,300 (family coverage) for 2020.
- The required contribution percentage for the individual mandate's affordability exemption will decrease for 2020.
- The final rule does not implement any policies to address the practice of "silver loading."

IMPORTANT DATES

April 19, 2019

The 2020 Final Notice of Benefit and Payment Parameters was issued.

2020 Benefit Year

The changes included in the final rule generally apply for the 2020 benefit year.

Final Notice of Benefit and Payment Parameters for 2020

OVERVIEW

On April 19, 2019, the Department of Health and Human Services (HHS) released its [final Notice of Benefit and Payment Parameters for 2020](#). This rule describes benefit and payment parameters under the Affordable Care Act (ACA) that apply for the 2020 benefit year. Standards included in the rule relate to:

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

HHS also sought comments on issues to address in the future, such as the practice of "silver loading," the automatic re-enrollment process through the Exchanges and any additional measures that would reduce eligibility errors and potential government misspending. Although the final rule does not finalize any policies related to these issues, HHS noted that it intends to take the comments received in response to the proposed rule into consideration in future rulemaking.

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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. 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 is **\$7,350 for self-only coverage** and **\$14,700 for family coverage**.
- ✓ For 2019, the out-of-pocket maximum is **\$7,900 for self-only coverage** and **\$15,800 for family coverage**.

HHS' proposed Notice of Benefit and Payment Parameters for 2020 (proposed Notice) would have increased the out-of-pocket maximum to \$8,200 for self-only coverage and \$16,400 for family coverage. However, the final rule implements slightly lower out-of-pocket maximums for 2020 of **\$8,150 for self-only coverage** and **\$16,300 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. For purposes of this exemption, coverage is considered affordable for an employee if the 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**.

Under the proposed Notice, the required contribution percentage would have increased in 2020 by 0.09 of a percentage point, to 8.39%. However, the final rule provides that, for 2020, an individual would be exempt from the individual mandate penalty if he or she must pay more than **8.24% of his or her household income** for MEC. This is a **decrease of 0.07 of a percentage point** from 2019.

The 2018 tax reform bill, called the [Tax Cuts and Jobs Act](#), **reduced the ACA's individual mandate penalty to zero, effective beginning in 2019**. As a result, beginning in 2019, individuals will no longer be penalized for

failing to obtain acceptable health insurance coverage. However, despite this repeal, the final 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).

Direct Enrollment in the Exchanges

In an effort to provide greater flexibility in how consumers shop for health insurance coverage, the 2020 final rule enhances direct enrollment through the Exchanges. Specifically, the final rule expands opportunities for individuals to directly enroll in Exchange coverage by enrolling through the websites of certain third parties—called direct enrollment entities—rather than through HealthCare.gov. The final rule also implements several changes intended to streamline the regulatory requirements applicable to these direct enrollment entities.

Direct enrollment is a mechanism for issuers and web brokers to enroll applicants in Exchange coverage through a non-Exchange website in a manner that would be considered to be through the Exchange. Initially implemented for the 2019 plan year, the final rule enhances the direct enrollment pathway to allow approved direct enrollment partners to host the Exchange eligibility application and enrollment service for Exchange applicants on their non-Exchange websites without redirecting to HealthCare.gov.

New Special Enrollment Period 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 2020 final rule establishes a new SEP, available at the option of the Exchange, for off-Exchange enrollees who experience a decrease in household income and are determined to be eligible for the premium tax credit through the Exchange.

Silver Loading

On Oct. 12, 2017, the White House [announced](#) that it would no longer reimburse insurers for cost-sharing reductions made available to low-income individuals through the Exchanges, effective immediately. Because Congress did not pass an appropriation for this expense, the Trump administration has taken the position that it cannot lawfully make the cost-sharing reduction payments.

In response to this, many issuers increased premiums in 2018 and 2019 only on silver level qualified health plans (QHPs) to compensate for the cost of those cost-sharing reduction payments—a practice sometimes referred to as “silver loading” or “actuarial loading.” Because premium tax credits are generally calculated based on the second-lowest-cost silver plan offered through the Exchange, “silver loading” has led to consumers receiving higher premium tax credits.

Because there has been no congressional appropriation for the cost-sharing reduction reimbursements, the proposed Notice of Benefit and Payment Parameters for 2020 requested comments on ways to address the practice of silver loading for future plan years. Since HHS did not propose any changes to silver loading in the proposed rule, the final rule does not finalize a policy related to silver loading. However, HHS noted that it will take the comments received in response to the proposed rule into consideration in future rulemaking.

Source: Department of Health and Human Services