



August 1, 2014

Submitted electronically via email to E-OHPSCA-FAQ.ebsa@dol.gov

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
200 Constitution Avenue, NW.
Washington, DC 20210

Dear Sir or Madam,

Subject: Notice of Proposed Rulemaking—Out-of-Pocket (OOP) Limits in Group Health Plans

The Treasury, the Department of Labor (DOL), and the Department of Health and Human Services (HHS) (collectively, the departments) have requested comments regarding guidance on annual cost-sharing limits under Section 1302 of the Patient Protection and Affordable Care Act (Affordable Care Act), which was published in Frequently Asked Questions (FAQs) About Affordable Care Act Implementation (Part XIX) on May 2, 2014 (the May 2014 FAQs).

Aon Hewitt appreciates the opportunity to submit comments in response to the departments' May 2014 FAQs.

Who We Are

Aon plc is the leading global provider of risk management, insurance and reinsurance brokerage, and human resource solutions and outsourcing services. We have 65,000 colleagues in 120 countries around the world. Aon has been named repeatedly as the world's best broker, intermediary, reinsurance intermediary, captives manager, and best employee benefits consulting firm by multiple industry sources.

As the global leader in talent, retirement, and health solutions, Aon Hewitt is the largest independent provider of administration services for retirement plans, serving 13.5 million retirement plan participants in the U.S. We have more than 7,500 retirement professionals dedicated to helping plan sponsors maximize retirement outcomes for their employees, manage risk, and control total plan costs.

Summary of Comments

As discussed below, Aon Hewitt urges that any future regulatory guidance developed by the departments confirm that the practice of reference-based pricing is acceptable as a reasonable medical management technique. In addition, Aon Hewitt urges the departments to adopt an explicit rule that any amounts applied to the Affordable Care Act's cost-sharing limits not include amounts incurred by plan participants and beneficiaries in excess of reference-based prices.

Reference-Based Pricing Should Be Deemed a Reasonable Medical Management Technique

As noted by the DOL in its May 2014 FAQs, under a system of reference-based pricing, "the plan pays a fixed amount for a particular procedure (for example, a knee replacement), which certain providers will

accept as payment in full.”¹ If the plan participant selects a more expensive provider, service, or treatment, the participant is liable for any amounts in excess of the reference-based price. As explained further by the Center for Studying Health System Change:

“Reference pricing is potentially an appealing cost-saving strategy for purchasers. Rather than limiting a provider network, reference pricing maintains access to a broad network. The enrollee decides whether to be treated at a lower-price provider with no OOP expense beyond typical cost sharing or a higher-price facility with additional cost above the reference price.”²

The practice of reference-based pricing “aims to encourage plans to negotiate cost-effective treatments with high quality providers at reduced costs.”³ As noted by Families USA, “one of the most significant benefits of reference pricing is its potential to drive health care savings by reducing the wide variation in provider prices that currently exists in the U.S.”⁴ According to Castlight Health:

“Wide price variations often exist for the same health care services, even within the same geography and same network. However, higher prices do not necessarily correspond to better quality care. [Reference-based pricing] creates an opportunity to reduce costs without sacrificing quality.... [C]overed employees can easily find high-quality providers that provide the services for a fee that is at or below the reference price.”⁵

Aon Hewitt’s survey of large and midsize employers in June 2014 found that although only 10% of employers had adopted reference-based pricing, 68% were considering that approach as a cost control strategy for future years.⁶ Reference-based pricing can provide an incentive to consumers and providers to adopt lower prices without sacrificing quality:

“When employees have access to information about price and quality and a financial incentive to shop for health care within a reference price, providers that want their business may be motivated to set more competitive prices. Providers that charge more than the reference price, as well as those within the reference price range, will face pressure to lower their prices to stay competitive with other high-quality providers in the area.”⁷

Given the policy goals of the Affordable Care Act to lower health care costs while maintaining choice of provider and access to health care, Aon Hewitt believes that any future guidance should provide that reference-based pricing is a reasonable medical management technique that employers may adopt while continuing when offering group health plan coverage to employees and beneficiaries.

1 May 2014 FAQ.

2 <http://www.hschange.com/CONTENT/1397/1397.pdf>

3 <http://www.americanhealthpolicy.org/Commentary>

4 <http://www.americanhealthpolicy.org/Commentary>

5 <http://www.castlighthealth.com/castlight-health-and-wellpoints-affiliated-health-plans-introduce-reference-based-benefits/>

6 <http://aon.mediaroom.com/2014-06-11-Aon-Hewitt-Survey-Shows-U-S-Employers-Interested-in-Exploring-Stricter-Rules-Around-Health-Benefits-and-Reference-Based-Pricing-as-Part-of-their-Health-Strategy>

7 <http://www.americanhealthpolicy.org/Commentary>

Amounts Above Reference-Based Pricing Should Not Apply to Affordable Care Act OOP Limits

In order to further the Affordable Care Act's public policy of reducing health care costs and providing for access to quality health care, Aon Hewitt urges that any future guidance issued by the departments provide that the Affordable Care Act's OOP limitation will not include amounts paid by a participant or beneficiary in excess of a group health plan's reference-based price for medical procedures and prescription drugs. Applying such excess amounts to the Affordable Care Act's OOP limits will reduce the incentive for participants to adhere to reference-based pricing, accelerating health care spending without any commensurate increase in health care access or quality. Moreover, Affordable Care Act guidance currently provides that balance billing amounts in provider networks need not count toward the Affordable Care Act OOP limit. Applying a similar rule to amounts in excess of reference-based pricing would provide for consistent treatment.

Closing

If you have any questions or comments, please contact the undersigned at the telephone number or email address provided below.

Sincerely,

J.D. Piro
Senior Vice President, Health & Benefits Legal
National Practice Leader
(203) 523-8456
john.piro@aonhewitt.com