

EMPLOYEE BENEFITS ALERT

AFFORDABLE CARE ACT: EMBEDDED INDIVIDUAL OUT OF POCKET MAXIMUM APPLIES IN 2016

The Affordable Care Act's (ACA's) rules regarding maximum cost sharing, which were effective for plan years beginning on or after Jan. 1, 2014, limit the maximum cost sharing a participant may incur in-network for essential health benefits. In 2015 these limits are \$6,600 for self-only coverage and \$13,200 for family coverage (these increase to \$6,850 and \$13,700 for 2016). Cost sharing includes deductibles, copayments, coinsurance and similar charges but does not include spending for non-covered services. Once the out-of-pocket maximum is reached for the year, a plan is required to cover 100% of charges for essential health benefits.

On May 26, 2015, the Departments of Labor, Health and Human Services and Treasury issued guidance in the form of a Frequently Asked Question ("FAQ") clarifying that ACA limits on out of pocket maximums require an "embedded" individual maximum out-of-pocket ("MOOP") limitation for coverage other than self-only coverage. This embedded "MOOP" cannot exceed the annual limit on cost sharing for self-only coverage (i.e. 6,850 for 2016). The embedded MOOP applies to all insured and self-insured non-grandfathered employer sponsored group health plans **effective January 1, 2016**.

The FAQ provides the following example to clarify the new embedded MOOP works:

Example: Assume that a family of four individuals is enrolled in family coverage under a group health plan in 2016 with an aggregate annual limitation on cost sharing of \$13,000 for all four enrollees. Assume that individual #1 incurs claims associated with \$10,000 in cost sharing, and that individuals #2, #3 and #4 each incur claims associated with \$3,000 in cost sharing (in each case, absent the application of any annual limitation on cost sharing). In this case, under the new guidance discussed above, because the self-only maximum annual limitation on cost sharing (\$6,850 in 2016) applies to each individual, cost sharing for individual #1 for 2016 is limited to \$6,850, and the plan is required to bear the difference between the \$10,000 in cost sharing for individual #1 and the maximum annual limitation for that individual, or \$3,150.

With respect to cost sharing incurred by all four individuals under the policy, the aggregate \$15,850 (\$6,850+ \$3,000 + \$3,000 + \$3,000) in cost sharing that would otherwise be incurred by the four individuals together is limited to \$13,000, the annual aggregate limitation under the plan, under the assumptions in this example, and the plan must bear the difference between the \$15,850 and the \$13,000 annual limitation, or \$2,850.

The new individual MOOP requirements are likely to impact group health plans, and in particular high deductible health plans. Based on current IRS rules for health savings accounts, many high deductible health plans disregard the individual MOOP do not pay at 100% until the family maximum is met. This is true even when all medical costs are incurred by only one individual family member. Thus, the new rule may result in increased cost and administration, particularly for high deductible health plans. Many plan sponsors are already preparing plan designs for the 2016 plan year and may need to revise such designs and/or cost structures by taking into account the new requirement.

*The Employee Benefits Alert is intended to keep readers current on matters affecting employee benefits and is not intended to be legal advice. If you have any questions about this alert or any other issues relating to employee benefits, please contact **Sandra Mihok** at 412.566.1903, **Kathryn English** at 412.566.1226, **Heather Stone Fletcher** at 412.566.6112, **Michael Herzog** at 412.566.6130, or **Paul Yenerall** at 412.566.1944.*