HAYS COMPANIES

Issues to Consider for 2021:

I. 2021 ACA Maximum Out-Of-Pocket Expenses (non-grandfathered plans)

- $8,550 for self-only coverage
- $17,100 for family coverage

II. 2021 HSA & HDHP Design Maximums

HDHP	2020	2021	Change in 2021
Minimum Annual Deductible	**$1,400** for self-only coverage	**$1,400** for self-only coverage	No change
	$2,800 for family coverage	**$2,800** for family coverage	No change
Out-of-pocket Maximums	**$6,900** for self-only coverage	**$7,000** for self-only coverage	$100 increase
	$13,800 for family coverage	**$14,000** for family coverage	$200 increase
Maximum Annual Contribution	**$3,550** for self-only coverage	**$3,600** for self-only coverage	$50 increase
	$7,100 for family coverage	**$7,200** for family coverage	$100 increase

- Catch-up contribution (Age 55 and older by the end of the tax year): $1,000

Note: DOL, HHS and IRS guidance requires group health plans to embed an individual out-of-pocket maximum in the plan's family coverage when the family out-of-pocket maximum exceeds the ACA's out-of-pocket maximum for self-only coverage.

III. Health FSA Limits

- The annual employee election remains unchanged from 2020 and is $2,750 for 2021.

IV. Transportation Limits

- The monthly limitation for the qualified transportation fringe benefit is unchanged from 2020 and is $270, as is the monthly limitation for qualified parking, for 2021.

V. Affordability Safe Harbors

- The safe harbor percentage for **2021 is 9.83%** (IRS per Rev. Proc. 2020-36) up from 9.78% in 2020.

Employer Shared Responsibility Tax (employer mandate) – projected for the 2021 plan year

- **4980H(a)** Tax for not offering minimum essential coverage to at least 95% of full-time eligible employees: For 2021, the ESRP will be $2,700 (annually) per all full-time eligible employees (less 30 full-time eligible employees).
- **4980H(b)** Tax for offering coverage that is not minimum value or not affordable to an eligible full-time employee or failing to offer coverage to a full-time employee when coverage is offered to at least 95% of full-time employees: For 2021, the ESRP will be $4,060 (annually) for each eligible employee not offered such coverage that receives an exchange subsidy.

VI. PCORI Fee

Fee due July 31, 2021

Plan Year End Date	Fee per Average Covered Life
Jan 2019 – Sep 2020	$2.54
Oct 2020 – Dec 2020	$2.66

Fee due July 31, 2022

Plan Year End Date	Fee per Average Covered Life
Jan 2021 – Sep 2021	$2.66
Oct 2021 – Dec 2021	TBD

VII. Selecting a Benchmark Plan – still a requirement for 2021

- The final Market reform rules require self-insured and large insured plans to "select" one of the three Federal Employees Health Benefit Program (FEHBP) options or a state benchmark plan **to define essential health benefits (EHB) for purposes of ensuring the plan imposes no annual or lifetime dollar limits on EHBs**.
- This requirement applies to benefits provided in or out-of-network.
- Applicable to plans renewing or beginning on or after January 1, 2017.

VIII. Health Insurance Provider's Fee

The fee is applicable for 2020 but has been *repealed* for calendar years beginning after December 31, 2020. It is tax deductible to employers if it is part of the premium. The *estimated* impact is 2.5% to 3% of premium.

Business affected:

- Insured individual and group medical plans
- Stand-alone, insured dental and vision plans
- Stand-alone, insured behavioral health and pharmacy plans
- Medicare Advantage plans
- Retiree-only plans
- Part D prescription benefit plans
- Medicaid (and CHIP) programs
- Taft-Hartley Plans to the extent the plans meet the other criteria for inclusion

Excluded Businesses:

- Self-funded employer sponsored group health plans [Note: Some benefits may be covered under an insured plan and therefore subject to this fee as well.]
- Non-profit corporations that receive more than 80% of their revenue from government sponsored poverty programs (Medicaid, CHIP) and that comply with certain restrictions on political activity
- Medicare supplemental coverage that meets the requirements of section1882(g)(1)
- VEBAs sponsored by an entity other than an employer or employers
- Coverage for specific diseases or hospital indemnity coverage
- Accident-only coverage
- ASO/Stop-loss
- U.S.-issued expatriate plans after 2015

IX. Wellness Incentive & Reward Limits

HIPAA

- Participation-only programs (e.g. fitness club discounts): unlimited
- Outcomes-based: Tobacco cessation 50% of employer + employee premium contribution. All other programs (e.g. biometrics) 30% of employer + employee premium contribution. Note: If combined, the total can be no more than 50% of employer + employee premium contribution, with any percentage over 30% being attributable to tobacco cessation.

ADA - NOTE

- A federal district court vacated key provisions of the EEOC's wellness program rules, effective Jan. 1, 2019.
- Employers should be careful about structuring incentives for wellness programs that ask for health information or involve medical exams.
- It is possible that the EEOC will issue new wellness rules prior to the end of calendar year 2020.

GINA

- Applies to incentives linked to the spouse or children of an employee participating in a medical exam or providing information regarding current or past health status: the maximum inducement to the employee is 30% of the employee only rate and if the spouse can participate, 30% of the employee only rate. The family rate is not considered.

X. Preventive Care Under the ACA Expanded to Include PrEP

The US Preventive Services Task Force (USPSTF) recommended that PrEP for HIV be covered as a preventive health service for certain at-risk populations. Group health plans, with the limited exception of grandfathered health plans, must follow the recommendations of the USPSTF for evidence-based items or services with an A or B rating. PrEP has an A rating. The USPSTF updated its recommendation in June of 2019, which indicates a 1/1/21 applicability date.

XI. Rx Coupons

Pharmacy Coupon impact on out-of-pocket expenses: initial guidance was provided for counting coupon amounts for brand name drugs (sometimes referred to as retail drugs) towards the out-of-pocket maximums under the ACA if there was no generic equivalent available. HHS has finalized the regulations applicable to coupons and cost-sharing:

> § 156.130 Cost-sharing requirements. * * * * * (h) Use of direct support offered by drug manufacturers. Notwithstanding any other provision of this section, and to the extent consistent with State law, **amounts paid toward reducing the cost sharing incurred by an enrollee using any form of direct support offered by drug manufacturers for specific prescription drugs may be, but are not required to be, counted toward the annual limitation on cost sharing**, as defined in paragraph (a) of this section.

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