HHS Changes Rule Regarding Prescription Drug Manufacturer Coupons and Cost-Sharing Requirements – Update

On August 26, the Department of Labor, Health and Human Services (HHS) and the Treasury issued FAQ #40 to the Affordable Care Act. The FAQ addresses the impact of drug manufacturers’ financial assistance on member out-of-pocket limits.

Background

To help maintain member affordability, drug manufacturers may provide financial assistance to offset high out-of-pocket expenses. Some employer plans do not count the amounts received from drug manufacturers towards a plan member’s out-of-pocket limit. In the final 2020 Notice of Benefit and Payment Parameters (2020 NBPP Final Rule), HHS states that plans and issuers are permitted to exclude the value of drug manufacturers coupons from counting toward the annual out-of-pocket limitations when a “medically appropriate generic equivalent” is available.

FAQ #40 acknowledges that the 2020 NBPP Final Rule could be misinterpreted. Specifically, HHS is aware some group health plans and issuers believe they are required to count all manufacturers financial assistance toward a member’s annual out-of-pocket limit, even when no medically appropriate generic equivalent is available.

This interpretation creates a conflict with 2004 IRS guidance related to HSAs. That guidance mandates that discounts like those offered by drug manufacturers cannot be used to satisfy an individual’s deductible.

The FAQ states that until the 2021 NBPP is issued, group health plans and issuers can continue to exclude the drug manufacturers’ financial assistance from the members’ out-of-pocket costs. HHS further stated they will provide additional guidance with the 2021 NBPP.

What does this mean to your plan?

Employer plans can continue to use their current cost share methodology regarding drug manufacturers’ financial assistance to members.

Please contact your Oswald client team representative for further information.

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