

HHS Proposed Guidance Would Clarify Rules for Drug Manufacturer Coupons

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The Department of Health and Human Services (HHS) revisited the treatment of prescription drug manufacturer coupons in a [proposed rule](#), published on February 6, 2020, that could be welcome news for employers that have been struggling to interpret conflicting guidance concerning these coupons. Under the proposed rule, called “HHS Notice of Benefit and Payment Parameters for 2021,” employers would have more flexibility in determining how and whether drug manufacturer coupons would count toward insurance deductibles and out-of-pocket limits.

The agency’s [previous final rule](#) regarding drug manufacturer coupons, which was published in April 2019, allowed plans to exclude drug coupon values from annual out-of-pocket maximums only when a generic drug was available. The preamble to the final rule indicated that state laws might require plans to apply drug coupon values to annual out-of-pocket maximums even when no generic equivalent existed.

Commenters to the final rule pointed to Internal Revenue Service (IRS) [Notice 2004-50](#), which indicates that plans should not apply the discount value from drug discount cards towards an individual’s deductible in a high-deductible health plan (HDHP) with a health savings account. In other words, the IRS only allows expenses actually paid by a plan participant to be applied to the deductible in an HDHP. These comments led HHS to backtrack on the final rule. In August of 2019, HHS [issued guidance](#) stating that it would not enforce the April final rule until new guidance was issued.

The proposed regulation would change the drug coupon rule so that any form of direct support offered by drug manufacturers (such as a coupon) may be, but is not required to be, applied to the plan participant’s annual out-of-pocket maximum. The preamble also clarifies that HHS agrees with the IRS’s position that “cost sharing” does not include amounts covered by drug manufacturer assistance. Employers that sponsor health plans (especially high deductible health plans) may want to monitor the HHS guidance regarding drug manufacturer coupons.

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