Einstein
Advanced Health Insurance Solutions

NEWSALERT

October 2020 | Volume 4 | Issue 10

Employee Benefits

Group Plan Affordability Levels Set for 2021

THE IRS has announced the new affordability requirement test percentage that group health plans must comply with under the Affordable Care Act.

Starting in 2021, the cost of self-only group plans offered to workers by employers that are required to comply with the ACA, must not exceed 9.83% of each employee's household income.

Under the ACA, "applicable large employers (ALEs)" – that is, those with 50 or more full-time workers – are required to provide health insurance that covers 10 essential benefits and that must be considered "affordable," meaning that the employee's share of premiums may not exceed a certain level (currently set at 9.78%).

The affordability threshold must apply to the least expensive plan that an employer offers its workers.

The threshold was increased because premiums for health coverage increased at a greater rate than national income growth during 2020.

With this in mind, if you are an ALE you should consult with us to ensure that you offer at least one plan with premium contribution levels that will satisfy the new threshold.

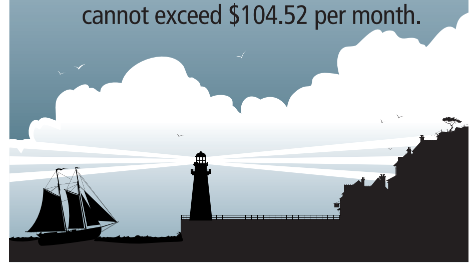
Failing to offer a plan that meets the affordability requirement to 95% of your full-time employees can trigger penalties of $4,060 (for 2021) per full-time employee, minus the first 30. The penalty is triggered for each employee that declines non-compliant coverage and receives subsidized coverage on a public health insurance exchange.

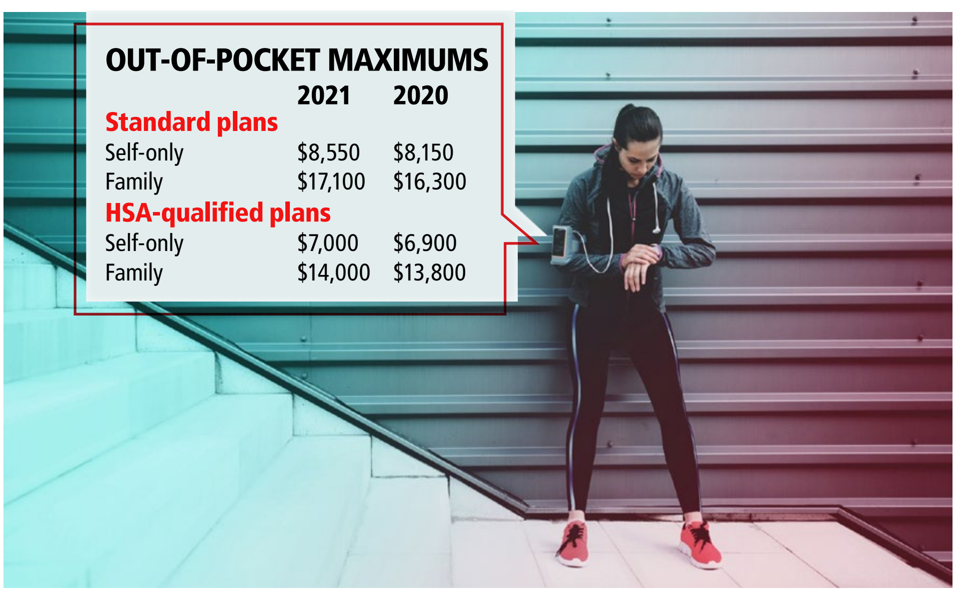
Since most employers don't know their employees' household incomes, they can use three ways to satisfy the affordability requirement (see box top right).

THREE SAFE HARBORS

The employees share of premiums cannot be more than 9.83% of either:

- The employee's W-2 wages, as they are reported in Box 1 (start of 2021);
- The employee's rate of pay, which is the hourly wage rate multiplied by 130 hours per month (for 2021); or
- The federal poverty level. Under this method, premium contributions cannot exceed $104.52 per month.





OUT-OF-POCKET MAXIMUMS

	2021	2020
Standard plans		
Self-only	$8,550	$8,150
Family	$17,100	$16,300
HSA-qualified plans		
Self-only	$7,000	$6,900
Family	$14,000	$13,800

Costs

The IRS also sets out-of-pocket maximum cost-sharing levels (see box on left). These limits cover plan deductibles, copayments and percentage-of-cost co-sharing payments. It does not cover premiums. ❖

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Pharmaceuticals

Executive Orders Take Aim at Medicare Drug Costs, More

PRESIDENT TRUMP in late September issued three executive orders that would affect Medicare outpatient drug prices, protect people with pre-existing conditions from health insurance pricing discrimination and end surprise billing.

The main, and most substantive, order would fix prices that Medicare pays for outpatient and pharmacy-sold pharmaceuticals to the lowest prices offered in comparable developed countries.

The Trump administration had announced in July that it would release an order on Medicare outpatient drug prices pending negotiations with the pharmaceutical industry. But after those talks failed to yield the results the administration had hoped for, the president decided to release the latest version of the order.

The original planned order would have focused on drugs covered by Medicare Part B (most of these pharmaceuticals are typically administered in the health provider's office in an outpatient setting). But the new order also includes outpatient drugs covered by Medicare Part D (drug plan coverage, which is often included in Medicare Advantage (Part C) plans).

'Most-favored nation' prices

The executive order would use a "most-favored nation" payment system, guaranteeing that Medicare would pay the lowest price found in any country that is a member of the Organization for Economic Cooperation and Development and that has a similar per-capita gross domestic product to the United States.

Specifically, the order directs the Health and Human Services secretary to write new regulations that tie Medicare outpatient drug payment to international prices, including:

- Creating a demonstration of a payment model to ensure Medicare Part B pays the most-favored-nation prices for some high-cost outpatient drugs.
- Creating a Center for Medicare and Medicaid Innovation demonstration for Medicare to pay the most-favored-nation price for Part D drugs for which there is insufficient competition (alternative drugs) and that have U.S. prices compared to those of other developed countries.

While the executive order only gives a broad outline of what regulations the HHS has to create, it is likely to be similar to the draft plan for a Center for Medicare and Medicaid Innovation that the administration released in 2018.

That plan would set Medicare Part B reimbursement based in part on drug prices paid in other countries. One key component of this would be that new middlemen would have to be created that will have to buy pharmaceuticals from manufacturers and sell them to providers.

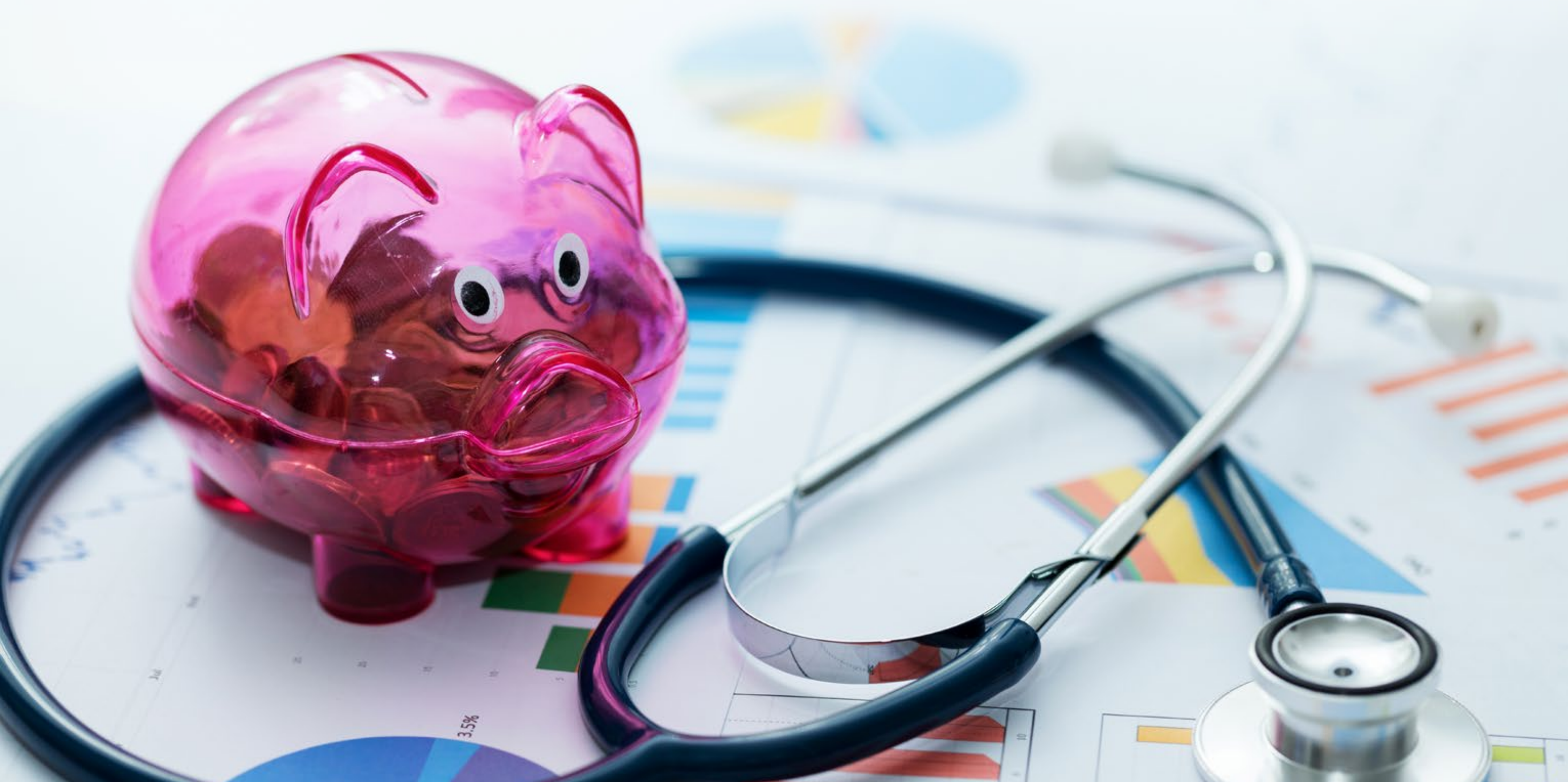
The draft calls for mandatory participation by providers.

However, with an upcoming election and the time it takes to write regulations that need to be sent out for public comment, it's unclear when final rules will be issued.

The other orders

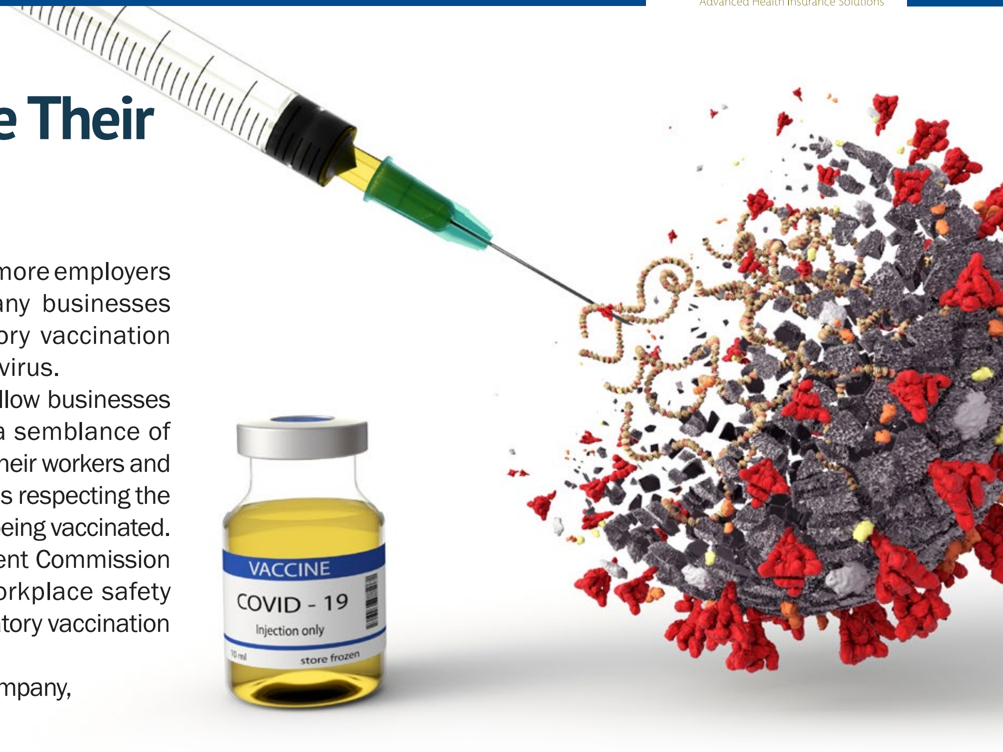
The executive order on pre-existing conditions does not identify a specific action to protect individuals, but states that such protection is the policy of the U.S. (it is also included in the Affordable Care Act).

The executive order on ending surprise medical billing requires the HHS secretary to work with Congress to reach a legislative solution by Dec. 31. If one is not enacted, the order directs the secretary to use administrative action to protect patients from such bills. ❖



The Big Question

Can Employers Require Their Workers to Vaccinate?



AS THE COVID-19 pandemic rages on and more employers bring staff back to the workplace, many businesses are considering implementing mandatory vaccination policies for seasonal flus as well as the coronavirus.

A safe and widely accessible vaccine would allow businesses to open their workplaces again and return to a semblance of normalcy. But employers have to juggle protecting their workers and customers from infection in their facilities as well as respecting the wishes of individual employees who may object to being vaccinated.

The issue spans Equal Opportunity Employment Commission regulations and guidance, as well as OSHA workplace safety rules. With that in mind, employers mulling mandatory vaccination policies need to consider:

- How to decide if a policy is right for the company,
- How they will enforce the policy,
- The legal risks of enforcing the policy, and
- Employer responsibilities in administering the policy.

Proceed with caution

A number of law firms have written blogs and alerts on the subject of mandatory vaccinations, and the overriding consensus recommendation is to proceed with caution.

In pandemic guidance issued during the 2009 H1N1 influenza outbreak, the EEOC stated that both the Americans with Disabilities Act and Title VII bar an employer from compelling its workers to be vaccinated for influenza regardless of their medical condition or religious beliefs – even during a pandemic.

The guidance stated that under the ADA, an employee with underlying medical conditions should be entitled to an exemption from mandatory vaccination (if one was requested) for medical reasons. And Title VII would protect an employee who objects due to religious beliefs against undergoing vaccination.

In these cases, the employer would have to enter into an interactive process with the worker to determine whether a reasonable accommodation would enable them to perform essential job functions without compromising workplace safety (such as providing personal protective equipment, moving their workstations or telecommuting).

One issue that employment law attorneys say may not have any legal standing is if an employee objects to inoculation based on being an "anti-vaxxer." In this case, depending on which state your business is located, you may or may not be able to compel an anti-vaxxer to get a vaccine shot if they want to keep their job.

Protecting your firm

To mount a successful defense of a vaccination policy if sued, you would need to be able to show that the policy is job-related and consistent with business necessity. And that the rationale is based on facts, tied to each employee's job description and that you enforce the policy consistently without prejudice or favoritism.

Also, you must ensure that any employee who requests accommodation due to their health status or religious beliefs does not suffer any adverse consequences. In other words, you cannot punish someone who is covered by the ADA or Title VII for refusing a vaccine.

Also, you will need to project and safeguard your employees' medical information, under the law.

The takeaway

Employment law experts say that once a vaccine is widely available, most employers will likely have the right to require that workers get it, as long as they heed the advice above about the ADA and Title VII. Until then, you may want to consider following the 2009 guidance. ❖

VACCINATION POLICY GUIDELINES

- Consider fully covering vaccine costs if they are not fully covered by your employees' health insurance.
- Allow workers to opt out if they have medical or religious objections.
- In the event of a medical or religious objection, engage in an interactive process to determine whether the worker can be accommodated.
- Implement safeguards for keeping your employees' medical information confidential.
- Don't abandon your other efforts to keep your workplace safe, such as the use of social distancing, regular cleaning and disinfecting, and the use of personal protective equipment.

Pandemic Year Planning

Get a Head Start on Open Enrollment for the 2021 Plan Year

WITH OPEN enrollment right around the corner, it's time to review the health plan options available to you for the next year and prepare your workplace for signing up for the 2021 policy year.

The big decision for employers is finding a plan that fits not only their budget, but also the budgets of their employees. And this is particularly important for "applicable large employers" under the Affordable Care Act, who must also ensure that the least expensive of their plans must not cost more than 9.83% of any of their health-plan-eligible employees' household incomes.

This year, due to the COVID-19 pandemic, benefits advisors recommend that employers get an earlier than usual start on preparing for their upcoming open enrollments. The following are just a few issues you need to consider for this year's open enrollment:

Determine which employees will receive coverage

It's to your advantage to try to get as many of your employees to enroll in your health plan as possible, particularly if you are a small employer. The more lives in your plan, the more the risk is spread for the insurer, which can translate into lower policy premiums for all of your workers.

Keep things simple

Try not to make open enrollment complicated. Your employees have enough on their minds during the pandemic. Your literature and meetings should provide easy-to-follow instructions that tell your workers:

- What they need to do to enroll or re-enroll.
- How they can choose the right health plan for themselves and their family, and
- When the deadline is.

Get an early start and provide employees with health plan information prior to open enrollment, so as to give them enough time to review and compare their insurance options.

Informing your employees

If you are planning to meet with your staff in person, you'll need to plan for social distancing as well as offering staff that cannot or do not feel safe the option to join the meeting via video conferencing.

If you plan to have your staff enroll and choose plans electronically, you need to make provisions for the ones who may not have access to a good internet connection or the technology to do so.

Periodically remind your employees to submit their applications or make changes before the end of the open enrollment period. Have a mechanism in place for identifying and approaching laggards as the deadline approaches.

The COVID factor

Your employees will want to know if testing and treatment of COVID-19 will be covered, as well as any vaccine that may eventually become available. Federal legislation enacted in March required all private insurance plans to cover costs associated with COVID-19 tests. A number of insurers announced that they would also waive all cost-sharing for in-network medical visits related to COVID-19, as well as for telehealth visits.

Since there are no laws that require private insurance plans to waive cost-sharing for COVID-19 treatment, you will have to explore your plan options to see which ones may offer treatment without cost-sharing. Also check to see if the plans you have access to will waive out-of-pocket fees for a coronavirus vaccine should one become available.

Coverage questions for your employees

Encourage your employees to ask questions during your meetings, and ask them to consider re-evaluating their coverage in light of:

- **Change in dependents** – Will employees be adding or removing any dependents, such as children or a spouse, from their health plans? Will you the employer contribute to qualified dependent coverage and if so, how much?
- **Health issues** – Does any employee have evolving health issues that will require more medical services than they have used in the past. They should also check to make sure their plan network includes their personal physician, as well as covering the medicines they may be taking regularly.
- **Affordability** – How much are they willing to pay for coverage and what kind of deducible would be in their price range? What is the premium cost-sharing (how much the employee pays for their share of the premium)?

The takeaway

During the pandemic, you'll need to get a head start on open enrollment by getting information on your offerings to your staff as early as possible. Be prepared to answer questions about coverage, particularly as it pertains to COVID-19.

You can work with us to make sure you have everything in place for a successful open enrollment. ❖