



National Compliance Update

USI EMPLOYEE BENEFITS

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Change on the Horizon for Prescription Drugs and EHBs

According to a recent FAQ, the Departments of Labor, the Treasury, and Health and Human Services ("HHS") (collectively, "the Departments") intend to issue guidance that would require large insured group health plans and self-funded plans to treat all prescription drugs as essential health benefits ("EHBs").

BACKGROUND

Generally, employers who offer large insured group health plans and self-funded group health plans are not required to cover EHBs. However, if the plan covers EHBs, the plan:

- May not impose annual or lifetime dollar limits on EHBs; and
- For non-grandfathered plans, cost-sharing for EHBs is counted toward the annual out-of-pocket maximum ("OOPM").¹

Prescription drugs are listed as an EHB.

In recent years, some programs have been designed to designate only certain prescription drugs as "EHBs" and other prescription drugs as "non-EHBs." This practice is often seen in connection with programs that utilize drug manufacturer coupons or other copay assistance.

HHS finalized the [2025 Benefit and Payment Parameters](#) regulation. Notably, the rule codifies current policy that prescription drugs that a plan covers in excess of those covered by a state's EHB-benchmark plan are considered EHBs, unless the coverage of the drug is mandated by state

¹ A plan or issuer that is not required to provide EHB must define EHB, for purposes of the prohibition on lifetime and annual limits, in a manner consistent with an EHB-benchmark plan selected by a state including coverage of any additional required benefits that are considered EHB.

action. This rule applies to the individual and small group insured market.² It does not apply to large insured group health plans and self-insured group health plans.

FAQ 66 – PROPOSED CHANGE FOR LARGE INSURED PLANS AND SELF-FUNDED PLANS

However, at the same time the final rule was issued, the Departments announced in FAQ 66 their intent to issue rulemaking that would require large insured group health plans and self-funded group health plans to treat all prescription drugs covered by the plan as EHBs, effectively aligning the rules across markets.

As a result:

- Annual and lifetime dollar limits on any covered prescription would be prohibited; and
- Cost-sharing would accumulate to the out-of-pocket maximum in a non-grandfathered plan.

EMPLOYER NEXT STEPS

Employers should await further guidance from the regulators on this issue. Employers that have large insured group health plans or self-funded plans that have designated certain prescription drugs as non-EHBs may need to make changes to their plan design when guidance is issued.

RESOURCES

- FAQ 66, [FAQ about Affordable Care Act Implementation Part 66 | U.S. Department of Labor \(dol.gov\)](#)
- Fact Sheet, [HHS Notice of Benefit and Payment Parameters for 2025 Final Rule | CMS](#)

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² Small group market generally means policies issued to employers with 1-50 employees. However, California, Colorado, New York, and Vermont have defined the small group market to include policies issued to employers with 1-100 employees.