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Drug Manufacturer Coupons – To Count, or Not to Count, Toward ACA Cost-Sharing?

Folks, that is the question.

As some of you may have heard, there's been litigation over whether coupons offered by drug manufacturers must be considered when calculating the ACA's annual cost-sharing limit.

THE GOOD NEWS — It appears HHS is not likely to enforce the matter until it issues further guidance. Reports tell us that pharmacy benefits managers are not very concerned about this right now.

THE NOT SO GOOD NEWS — Some state insurance laws require members to be given credit for any coupons, however, this is not required for self-funded ERISA plans.

WHAT DOES THIS MEAN IN A NUTSHELL? Unless you are impacted by differing state laws (and until we hear more from HHS), carry on as you have been.

Here is some background for a deeper dive:

- **THE 2020 RULE:** Says that group health plans/issuers are not required to count coupons toward the out-of-pocket maximums (MOOP) if there is a generic equivalent available. This was interpreted to mean that a drug coupon must count against the MOOP if there was no generic equivalent available.

- **THE 2021 RULE**: Says that group health plans/issuers were permitted (but not required) to count drug manufacturer coupons toward the MOOP. This was done in part to allow high deductible health plans (HDHP) to exclude coupons from the MOOP so that HDHP/HSA status was not invalidated.
- **WASHINGTON, D.C. DISTRICT COURT**: Invalidated the 2021 Rule, leaving the 2020 Rule in place. HHS appealed the ruling, but recently dropped its appeal. HHS has indicated informally that it will not take enforcement action against plans on this matter, until, of course, it issues further guidance.

In short, we see two compliance issues at play:

1. Will not counting the coupons against the MOOP cause ACA cost-sharing compliance failure?
2. Will not counting coupons against the MOOP cause HDHP failure?

The first issue appears to be minimized due the HHS stated nonenforcement policy. The second is not as clear (however, applying the coupon toward the deductible of an HDHP remains problematic).

We will be sure to keep our pulse on this issue and keep you updated. If you or your team have any questions or concerns about evolving topic, feel free to reach out to your Excelsior Solutions team.

