

Rules Requiring All Prescription Drugs to Count Towards Out-of-Pocket Limits May Be Coming

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PRACTICES Employee Benefits and Executive Compensation

Generally, employer-sponsored group health plans must have compliant annual out-of-pocket limits on “essential health benefits” (“**EHB**”) under the ACA. The ACA defines EHB to include prescription drugs and a plan is permitted to define EHB in accordance with a state benchmark plan. HHS recently issued the final Notice of Benefit and Payment Parameters for 2025 that codifies HHS’s position that prescription drugs in excess of those covered by a state’s benchmark plan are still considered EHB. Although these rules do not apply to large group market or self-funded group health plans, the DOL issued an FAQ stating that it intends to propose rulemaking that would require large group market and self-funded group health plans to treat prescription drugs covered by the plan, including those in excess of the state benchmark plan, as EHB and, therefore, subject to the annual out-of-pocket limit. Currently, group health plans may choose to not treat certain drugs as EHB. Although reasons for doing so may vary, employers may make this choice in an effort to facilitate participants’ enrollment in drug manufacturer’s assistance programs.

ACA FAQ Part 66 is available [here](#).