



March 2, 2020

Submitted electronically via: www.regulations.gov

Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-9116-P
P.O. Box 8016
Baltimore, MD 21244-8016

Re: CMS-9116-P – HHS Notice of Benefit and Payment Parameters for 2021

Dear Sir or Madam:

Business Group on Health appreciates the opportunity to respond to the Centers for Medicare and Medicaid Services' (CMS's) notice of proposed rulemaking regarding payment parameters and other policies related to Federally-facilitated and State-based Exchanges.

The Business Group represents [447 primarily large employers](#), including 74 of the Fortune 100, who voluntarily provide health benefits and other health programs to over 55 million American employees, retirees, and their families. Our members employ and provide health coverage under a wide variety of arrangements, often tailoring their group health offerings to the specific needs of their lines of business. This coverage generally is self-insured group health plan coverage or a combination of self-insured and insured coverage.

As our members continue to comply with the ACA, ERISA, and other group health plan requirements, primary concerns remain:

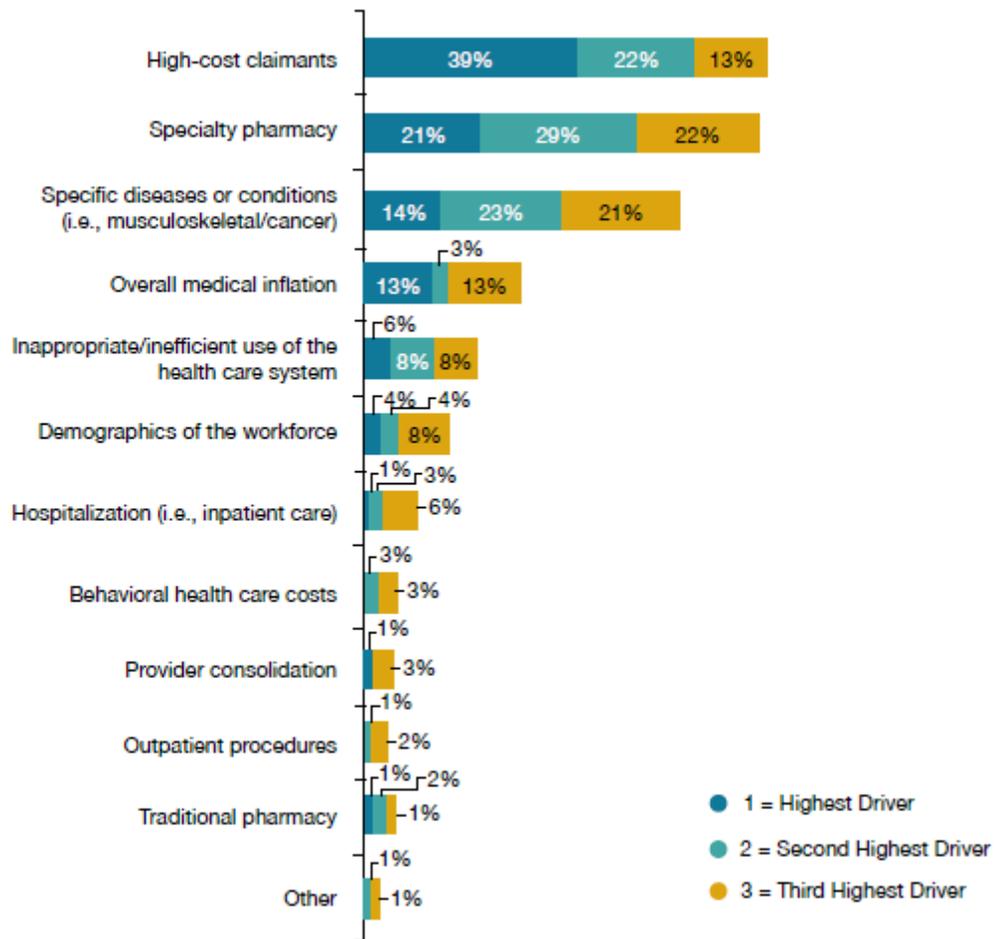
- Providing comprehensive health benefits in an efficient, cost-effective way while ensuring access to high-quality, evidence-based care;
- Being able to provide plan participants with meaningful information on out-of-pocket costs and total cost of care, matched with quality and performance data;
- Engaging employees in an increasingly complex health care system as a part of an overall strategy to maintain a productive and competitive workforce; and

- Minimizing the administrative and cost burdens associated with group health plan compliance obligations.

I. Cost-Sharing Requirements

As noted above, Business Group members provide robust medical and pharmacy benefits and tailor these benefits to the needs of their diverse employee populations. To do so, employers must maintain flexibility in plan design and focus on containing and lowering health care costs for their employee populations as a whole, including prescription drug costs.¹

Figure 36: Top Drivers of Rising Health Care Costs



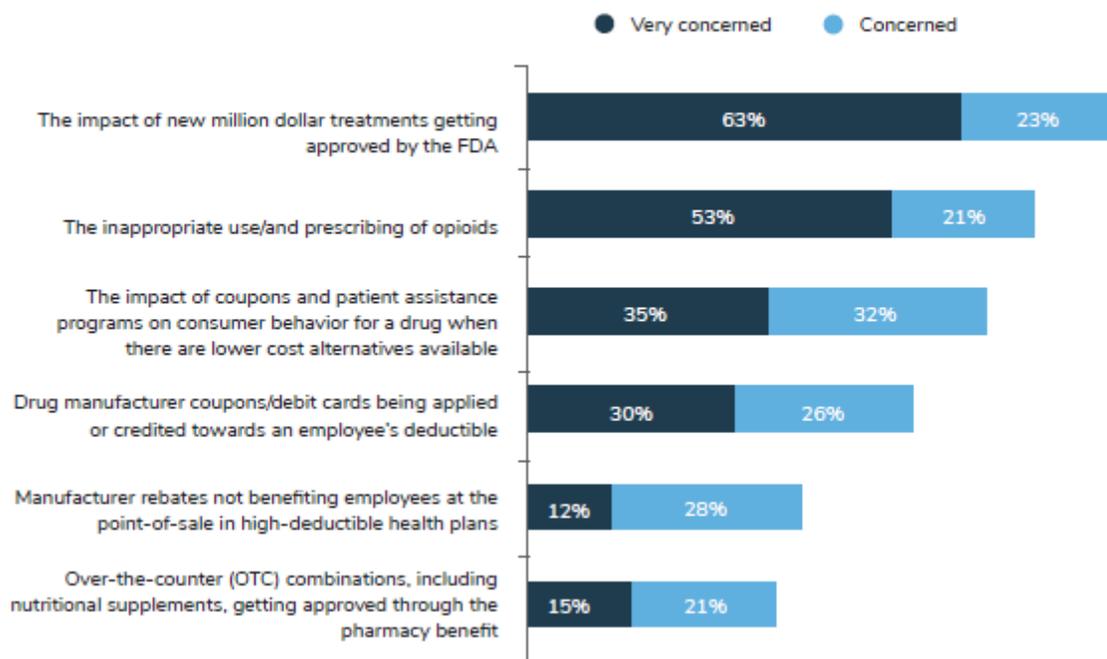
¹ Lykens, Craig, *2019 Large Employers' Health Care Strategy and Plan Design Survey 22*, National Business Group on Health.

Because prescription drug costs remain one of the top cost drivers for employer-sponsored group health plans, it is critical that employers be able to use all available tools to encourage the use of lower-cost and more effective medications. Therefore, we support CMS’s proposal to

- Revise 45 C.F.R. § 156.130(h) to provide that amounts paid toward reducing the cost-sharing incurred by an enrollee using any form of direct support offered by drug manufacturers are permitted, but not required, to be counted toward the annual limitation on cost-sharing; and
- Interpret the definition of cost-sharing to exclude expenditures covered by drug manufacturer coupons.

Our most recent survey shows that most employers are concerned or very concerned about these types of direct support programs and their tendency to encourage plan participants to select costlier drugs, thereby increasing overall costs for both group health plans and participants.²

Figure 7.1: Large Employers’ High Level of Concern Regarding Pharmacy Issues, 2019

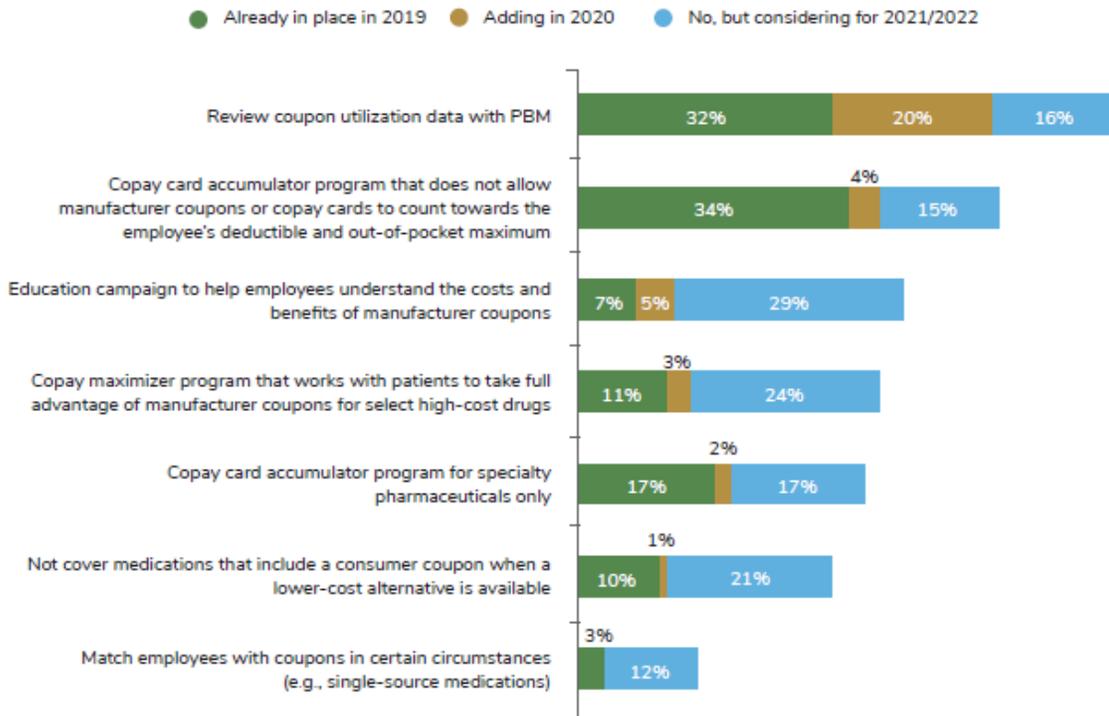


Our survey data show that plan sponsors are using a variety of tools to address prescription drug costs, including accumulator programs that preserve plan design integrity by preventing

² Lykens, Craig, *2020 Large Employers’ Health Care Strategy and Plan Design Survey 32*, National Business Group on Health, available at: <https://www.businessgrouphealth.org/resources/2020-large-employers-health-care-strategy-and-plan-design-survey>.

third-party dollars from applying toward deductibles or out-of-pocket maximums.³ Limiting use of these tools would disrupt current plan designs and hamper plan sponsors' efforts to tailor their plan designs to their specific cost concerns, which include lowering overall premiums as well as participant cost-sharing.

Figure 7.4: Large Employer Tactics to Address Consumer Coupon Cards, 2019-2022



We also agree with CMS's assessment that the revised § 156.130(h) will ensure that plan sponsors and participants can comply with IRS rules regarding health savings account (HSA) eligibility. In 2020, 89% of large employers will offer consumer-directed health plans, most of which will consist of HSAs paired with high-deductible health plans.⁴ Therefore, preserving HSA eligibility remains a high priority for plan sponsors and participants.

II. Verification Process Related to Eligibility for Insurance Affordability Programs

Finally, we support CMS's efforts to strengthen program integrity with respect to premium tax credits (APTCs) and cost-sharing reductions (CSRs) while minimizing the burden on states,

³ Lykens, Craig, *2020 Large Employers' Health Care Strategy and Plan Design Survey* 35, National Business Group on Health, available at: <https://www.businessgrouphealth.org/resources/2020-large-employers-health-care-strategy-and-plan-design-survey>.

⁴ Lykens, Craig, *2020 Large Employers' Health Care Strategy and Plan Design Survey* 41, National Business Group on Health, available at: <https://www.businessgrouphealth.org/resources/2020-large-employers-health-care-strategy-and-plan-design-survey>.

employers, consumers, and taxpayers. As HHS considers alternatives to the random sampling required by 45 C.F.R. § 155.320(d)(4), we emphasize that (1) as HHS notes, a very small number of Exchange enrollees receive inappropriate payments of APTCs/CSRs and (2) plan sponsors already submit substantial information regarding coverage available to employees through the IRS's annual Form 1095-C process. Because Forms 1095-C provide information on employer-sponsored coverage available to individuals—including information on specific months that such coverage is available—we believe additional solicitations from employers are unnecessary. We encourage HHS to engage with and solicit feedback from employers as it develops alternatives to the current 45 C.F.R. § 155.320(d)(4).

Thank you for considering our comments and recommendations. We would be happy to provide additional details on the employer and group health plan perspectives. Please feel free to contact me (marcotte@businessgrouphealth.org) or Debbie Harrison (harrison@businessgrouphealth.org), the Business Group's Director, Regulatory and Compliance, to discuss.

Sincerely,

A handwritten signature in black ink that reads "Brian Marcotte". The signature is written in a cursive, flowing style.

Brian Marcotte
President