

## **Part III --Administrative, Procedural, and Miscellaneous**

### **26 CFR 54.9816-6T Methodology for calculating qualifying payment amount in 2022**

#### **NOTICE 2022-11**

#### **SECTION 1. PURPOSE AND SCOPE**

This notice provides guidance for calculating the qualifying payment amount for items and services furnished in 2022 for purposes of sections 9816 and 9817 of the Internal Revenue Code (Code), sections 716 and 717 of the Employee Retirement Income Security Act of 1974 (ERISA), and sections 2799A-1 and 2799A-2 of the Public Health Service Act (PHS Act) in the case of a group health plan or group or individual health insurance issuer that does not have sufficient information to calculate the median of the contracted rates in 2019 (including for items and services not offered in 2019). This notice was drafted in consultation with the Departments of Labor and Health and Human Services.

#### **SECTION 2. BACKGROUND**

Under Treas. Reg. § 54.9816-6T(c), 29 CFR 2590.716-6(c), and 45 CFR 149.140(c),<sup>1</sup> for an item or service furnished during 2022, a group health plan or group or individual health insurance issuer<sup>2</sup> must calculate the qualifying payment amount by increasing the median contracted rate (as determined in accordance with § 54.9816-6T(b), 29 CFR

---

<sup>1</sup> These interim final rules were issued in July 2021 to implement sections 9816 and 9817 of the Code, sections 716 and 717 of ERISA, and sections 2799A-1 and 2799A-2 of the PHS Act. 86 FR 36872 (7/13/21).

<sup>2</sup> 5 CFR 890.114(b) provides that, for purposes of the No Surprises Act, “group health plan” means “a health benefits plan” offered by carriers under the Federal Employees Health Benefits (FEHB) Act. Accordingly, the guidance provided in this notice also applies to FEHB carriers. See 5 U.S.C. 8901(p).

2590.716-6(b), and 45 CFR 149.140(b)) for the same or similar item or service under such plan or coverage, on January 31, 2019, by the combined percentage increase as published by the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) to reflect the percentage increase in the consumer price index for all urban consumers (U.S. city average) (CPI-U) over 2019, such percentage increase over 2020, and such percentage increase over 2021. Per Rev. Proc. 2022-11, 2022-3 IRB 449, for items and services provided on or after January 1, 2022, and before January 1, 2023, the combined percentage increase to adjust the median contracted rate is 1.0648523983.

Pursuant to § 54.9816-6T(c)(3)(i), 29 CFR 2590.716-6(c)(3)(i), and 45 CFR 149.140(c)(3)(i), for an item or service furnished during 2022, a plan or issuer that does not have sufficient information to calculate the median of the contracted rates in 2019 for the same or similar item or service provided in a geographic region must calculate the qualifying payment amount by first identifying the rate that is equal to the median of the in-network allowed amounts for the same or similar item or service provided in the geographic region in 2021, determined by the plan or issuer through use of any eligible database, and then increasing that rate by the percentage increase in the CPI-U over 2021. Similarly, in the case of a newly covered item or service furnished during the first coverage year, when a plan or issuer does not have sufficient information to calculate the median of the contracted rates in the first coverage year for the item or service, the plan or issuer must calculate the qualifying payment amount by using an eligible database to determine the rate that is equal to the median of the in-network allowed

amounts for the same or similar item or service provided in the geographic region in the year immediately preceding the first coverage year, and then increasing that rate by the percentage increase in the CPI-U over the preceding year.<sup>3</sup>

Under § 54.9816-6T(c)(3)(ii), 29 CFR 2590.716-6(c)(3)(ii), and 45 CFR 149.140(c)(3)(ii), for an item or service furnished in a subsequent year (before the first sufficient information year for the item or service with respect to the plan or coverage), the plan or issuer must calculate the qualifying payment amount by increasing the qualifying payment amount determined for the item or service for the year immediately preceding the subsequent year, by the percentage increase in the CPI-U over the preceding year.

### **SECTION 3. GUIDANCE**

The percentage increase in the CPI-U over a preceding year is calculated by dividing the average CPI-U for the preceding year by the average CPI-U for the year immediately prior to the preceding year. For this purpose, the average CPI-U for a year is the average of the monthly CPI-Us published by the Bureau of Labor Statistics of the Department of Labor for the 12-month period ending on August 31 of each year. The percentage increase in the CPI-U for items and services provided in 2022 over the preceding year is the average CPI-U for 2021 over the average CPI-U for 2020.

---

<sup>3</sup> In cases in which an eligible database is used to determine the qualifying payment amount with respect to an item or service furnished during a calendar year, the plan or issuer must use the same database for determining the qualifying payment amount for that item or service through the last day of the calendar year, and if a different database is selected for some items or services, the basis for that selection must be one or more factors not directly related to the rate of those items or services (such as sufficiency of data for those items or services).

Pursuant to this calculation, the percentage increase from 2021 to 2022 is 1.0299772040.

Therefore, for an item or service furnished in 2022 for which a plan or issuer does not have sufficient information to calculate the median of the contracted rates in 2019, the plan or issuer must calculate the qualifying payment amount by multiplying the median of the in-network allowed amounts for the same or similar item or service provided in the geographic region in 2021, drawn from any eligible database, by the percentage increase of 1.0299772040. Similarly, in the case of a newly covered item or service furnished in 2022, when 2022 is the first coverage year for the item or service with respect to the plan or coverage, the plan or issuer must calculate the qualifying payment amount by multiplying the median of the in-network allowed amounts for the same or similar item or service provided in the geographic region in 2021, drawn from any eligible database, by the percentage increase of 1.0299772040. Pursuant to this notice, plans and issuers may round any resulting qualifying payment amount to the nearest dollar.

The Treasury Department and the IRS anticipate issuing additional guidance regarding the calculation of the qualifying payment amount in these circumstances for subsequent years.

#### **SECTION 4. EFFECTIVE DATE**

The effective date of this notice is January 1, 2022.

## **SECTION 5. DRAFTING INFORMATION**

The principal author of this notice is Kari DiCecco of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, contact Kari DiCecco at 202-317-5500 (not a toll-free call).