

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 54.9816-6T: Calculating the qualifying payment amount in 2024

Notice 2024-1

SECTION 1. PURPOSE AND SCOPE

Pursuant to Treas. Reg. § 54.9816-6T(c), 29 CFR 2590.716-6(c), and 45 CFR 149.140(c), this notice provides the percentage increase for calculating the qualifying payment amounts (QPAs) for items and services furnished during 2024 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). These provisions, added by the No Surprises Act,¹ provide protections against surprise medical bills in certain circumstances. This notice was drafted in consultation with the Departments of Labor and Health and Human Services. Similar guidance for items and services furnished during 2022 and 2023 was published in Revenue Procedure 2022-11, Notice 2022-11, and Notice 2023-4.²

SECTION 2. BACKGROUND

Under § 54.9816-6T(c), 29 CFR 2590.716-6(c), and 45 CFR 149.140(c), for an item or service furnished during 2022, plans and issuers must calculate the QPA by increasing the median contracted rate (as determined in accordance with § 54.9816-

¹ The No Surprises Act was enacted as Title I of Division BB of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1182 (2020).

² Revenue Procedure 2022-11, 2022-3 IRB 449; Notice 2022-11, 2022-14 IRB 939, and Notice 2023-4, 2023-2 IRB 321.

6T(b), 29 CFR 2590.716-6(b), and 45 CFR 149.140(b))^{3,4} 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, the percentage increase over 2020, and the percentage increase over 2021.⁵ Pursuant to Revenue Procedure 2022-11, 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 for the same or similar item or service under such plan or coverage, on January 31, 2019, is 1.0648523983.

Under § 54.9816-6T(c)(2), 29 CFR 2590.716-6(c)(2), and 45 CFR 149.140(c)(2), with respect to a sponsor of a plan or issuer offering group or individual health insurance coverage in a geographic region in which the sponsor or issuer did not offer any group health plan or health insurance coverage in 2019, for the first year in which the group health plan or group or individual health insurance coverage is offered in the region, if the plan or issuer does not have sufficient information to calculate the median

³ For information on the calculation of QPAs in light of the August 24, 2023 decision in *Texas Medical Association et al. v. United States Department of Health and Human Services et al.*, Case No. 6:22-cv-450-JDK (E.D. Tex.), see FAQs about Consolidated Appropriations Act, 2021 Implementation Part 62 (Oct. 6, 2023), available at <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-62> and <https://www.cms.gov/files/document/faqs-part-62.pdf>.

⁴ The protections against surprise billing additionally apply to health benefits plans offered by carriers under the Federal Employees Health Benefits (FEHB) Act pursuant to 5 U.S.C. 8902(p). Accordingly, the guidance provided in this notice applies to FEHB carriers to the extent consistent with their contracts. See 5 CFR 890.114.

⁵ The calculations of the QPAs for anesthesia services, air ambulance services, and certain other items or services furnished during 2022 for which a plan or issuer has sufficient information to calculate the median of the contracted rates in 2019 differ slightly, but all use the same formula for increasing a base rate by the combined percentage increase as published by the Treasury Department and the IRS to reflect the percentage increase in the CPI-U over 2019 and subsequent years. See § 54.9816-6T(c)(1)(iii)-(vii), 29 CFR 2590.716-6(c)(1)(iii)-(vii), and 45 CFR 149.140(c)(1)(iii)-(vii).

of the contracted rates for an item or service provided in the geographic region, the plan or issuer must determine the QPA 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 in 2022. For each subsequent year the group health plan or group or individual health insurance coverage is offered in the region, the plan or issuer must calculate the QPA by increasing the QPA determined for items or services provided in the immediately preceding year, by the percentage increase in the CPI-U over the preceding year.⁶

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 QPA 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 QPA 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

⁶ The calculations of the QPAs for anesthesia services, air ambulance services, and certain other items or services furnished in a subsequent year differ slightly, but all use the same formula for increasing the indexed median contracted rate determined for the item or service in the immediately preceding year by the percentage increase. See § 54.9816-6T(c)(2)(ii), 29 CFR 2590.716-6(c)(2)(ii), and 45 CFR 149.140(c)(2)(ii).

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.

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 QPA by increasing the QPA 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.

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. Pursuant to Notice 2022-11, the percentage increase from 2021 to 2022 is 1.0299772040. The percentage increase in the CPI-U for items and services provided in 2023 over the preceding year is the average CPI-U for 2022 over the average CPI-U for 2021. Pursuant to Notice 2023-4, the percentage increase from 2022 to 2023 is 1.0768582128.

In the case of a plan or issuer that does not have sufficient information to calculate the median of the contracted rates for the same or similar item or service provided in a geographic region and determine the QPA in accordance with the previously described methodology because the item or service is billed under a new service code, for items or services furnished in 2022 (or for newly covered items and services, during the first coverage year for the item or service), the plan or issuer must identify a reasonably related service code that existed in the immediately preceding

year and calculate the QPA pursuant to § 54.9816-6T(c)(4)(i), 29 CFR 2590.716-6(c)(4)(i), and 45 CFR 149.140(c)(4)(i).

Under § 54.9816-6T(c)(4)(ii), 29 CFR 2590.716-6(c)(4)(ii), and 45 CFR 149.140(c)(4)(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 such plan or coverage or before the first year for which an eligible database has sufficient information to calculate a rate under § 54.9816-6T(c)(3)(i), 29 CFR 2590.716-6(c)(3)(i), and 45 CFR 149.140(c)(3)(i) in the immediately preceding year), the plan or issuer must calculate the QPA by increasing the QPA 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, rounded to 10 decimal places. The percentage increase in the CPI-U for items and services provided in 2024 over the preceding year is the average CPI-U for 2023 over the average CPI-U for 2022. Pursuant to this calculation, the percentage increase from 2023 to 2024 is 1.0543149339. Further, pursuant to this notice, plans and issuers may round any resulting QPAs to the nearest dollar.

To calculate the adjusted QPA, the prior year's adjusted QPA is multiplied by the percentage increase for the most recent year. To simplify this calculation, this notice provides cumulative percentage increases. To calculate the adjusted QPA for items and services furnished in 2024, the "base year" QPA is multiplied by the cumulative percentage increase for the year the base QPA originated. A plan or issuer may select their preferred method, but it must be applied consistently. A plan or issuer is not permitted to use one method for certain QPAs and a different method for other QPAs.

BASE YEAR OF QPA ORIGINATION	CUMULATIVE PERCENTAGE INCREASE FOR QPA FROM BASE YEAR TO 2023	PERCENTAGE INCREASE FOR QPA FROM 2023 TO 2024	CUMULATIVE PERCENTAGE INCREASE FOR QPA FROM BASE YEAR TO 2024
2019	1.1466950506	1.0543149339	1.2089777165
2021	1.1091394112	1.0543149339	1.1693822450
2022	1.0768582128	1.0543149339	1.1353476955
2023	1.0000000000	1.0543149339	1.0543149339

.01 Adjusting QPAs based on January 31, 2019 rates.

For QPAs calculated by increasing the median contracted rate for 2019, the QPAs for items and services furnished in 2024 are determined by taking the QPAs calculated for items and services furnished in 2023 and multiplying the 2023 adjusted QPAs by the percentage increase from 2023 to 2024 (1.0543149339). Alternatively, the QPAs for items and services furnished in 2024 may be calculated by increasing the median contracted rate for 2019 by the 2024 cumulative percentage increase for the 2019 base year (1.2089777165).

For example, using the alternative method: An item is furnished in 2024. The median contracted rate for the item on January 31, 2019, was \$1,500. The 2024 adjusted QPA for the item can be calculated by multiplying \$1,500 x 1.2089777165, resulting in \$1,813.⁷

.02 Adjusting QPAs based on 2021 rates.

For items and services furnished in 2022 for which the QPAs were calculated by increasing 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 from 2021 to 2022, the QPAs for items and services furnished in 2024 are determined by taking the QPAs calculated for the items and services furnished in 2022 and multiplying the 2022 adjusted QPAs by the percentage increase from 2022 to 2023 (1.0768582128) and multiplying the resulting 2023 adjusted QPAs by the percentage increase from 2023 to 2024 (1.0543149339). Alternatively, the QPAs for items and services furnished in 2024 may be calculated by multiplying the 2022 adjusted QPA by the 2024 cumulative percentage increase for the 2021 base year (1.1693822450).

For example, using the alternative method: A newly covered service for which the plan or issuer does not have sufficient information to calculate the median of the contracted rates is furnished in 2022. The median of the in-network allowed amounts for the same or similar service provided in the geographic region in 2021, drawn from any

⁷ The 2022 adjusted QPA for the \$1,500 item was \$1,597 (\$1,500 x 1.0648523983). The 2023 adjusted QPA for the item was \$1,720 (\$1,597 x 1.0768582128). The 2024 adjusted QPA for the item is \$1,813 (\$1,720 x 1.0543149339).

eligible database, was \$4,000. The 2024 adjusted QPA for the covered service is \$4,678 ($\$4,000 \times 1.1693822450$).⁸

.03 Adjusting QPAs based on 2022 rates.

For items and services furnished in 2023 for which the QPAs were calculated by increasing the median of the in-network allowed amounts for the same or similar item or service provided in the geographic region in 2022, drawn from any eligible database, by the percentage increase from 2022 to 2023, the QPAs for items and services furnished in 2024 are determined by taking the QPAs calculated for the items and services furnished in 2023 and multiplying the 2023 adjusted QPAs by the percentage increase from 2023 to 2024 (1.0543149339). Alternatively, the QPAs for items and services furnished in 2024 may be calculated by increasing the median contracted rate for 2022 by the 2024 cumulative percentage increase for the 2022 base year (1.1353476955).

For example, using the alternative method: A newly covered service for which the plan or issuer does not have sufficient information to calculate the median of the contracted rates is furnished in 2023. The median of the in-network allowed amounts for the same or similar service provided in the geographic region in 2022, drawn from an eligible database, was \$2,100. The 2024 adjusted QPA for the covered service is \$2,384 ($\$2,100 \times 1.1353476955$).⁹

The adjustment to the QPAs will be applied similarly for items and services covered by a new plan or new group or individual health insurance coverage that was

⁸ The 2022 adjusted QPA for the \$4,000 service is \$4,120 ($\$4,000 \times 1.0299772040$). The 2023 adjusted QPA for the service is \$4,437 ($\$4,120 \times 1.0768582128$). The 2024 adjusted QPA is \$4,678 ($\$4,437 \times 1.0543149339$).

⁹ The 2023 adjusted QPA for the \$2,100 service is \$2,261 ($\$2,100 \times 1.0768582128$). The 2024 adjusted QPA is \$2,384 ($\$2,261 \times 1.0543149339$).

not offered in a geographic region in a prior year. For items and services first offered by a new plan or new group or individual health insurance coverage in a geographic region in 2023 for which the plan or issuer does not have sufficient information to calculate the median of the contracted rates for the items or services provided in the geographic region, the QPAs are calculated by increasing the median of the in-network allowed amounts for the same or similar item or service provided in the geographic region in 2022, drawn from any eligible database, by the percentage increase from 2022 to 2023 (1.0768582128). For that plan or coverage, the QPAs for items and services furnished in 2024 are determined by taking the QPAs calculated for items and services furnished in 2023 and multiplying the 2023 adjusted QPAs by the percentage increase from 2023 to 2024 (1.0543149339).

.04 Calculating QPAs when 2024 is the first coverage year.

For newly covered items and services furnished in 2024 for which the plan or issuer does not have sufficient information, when 2024 is the first coverage year for the item or service with respect to the plan or coverage, the QPAs for the items and services first furnished in 2024 are determined by multiplying the median of the in-network allowed amounts for the same or similar item or service provided in the geographic region in 2023, drawn from any eligible database, by the percentage increase from 2023 to 2024 (1.0543149339).

For example, using the alternative method: A newly covered service is furnished in 2024. The median of the in-network allowed amounts for the same or similar service provided in the geographic region in 2023, drawn from an eligible database, was \$3,000. The 2024 adjusted QPA for the service is \$3,163 ($\$3,000 \times 1.0543149339$).

SECTION 4. EFFECTIVE DATE

The effective date of this notice is January 1, 2024.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Jason Sandoval of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes).

For further information regarding this notice, contact Jason Sandoval at 202-317-5500 (not a toll-free call).