What Does the New HHS Rule Mean for Employers?
Mike Stull, chief marketing officer, Employers Health

The U.S. Department of Health & Human Services requested comment on a proposed rule that removes the current safe harbor protections for rebates involving prescription pharmaceuticals from the Federal anti-kickback statute and creates two new safe harbor protections for certain point-of-sale discounts and certain PBM service fees. The proposal would only directly apply to plan sponsors and PBMs in the Medicare Part D or Medicaid managed care marketplace. The rule does NOT apply to plan sponsors outside of these programs. The proposed effective date of the rule is Jan. 1, 2020.

While the rule does not directly impact those plan sponsors in the commercial market, there is certainly an opportunity for any changes made to the standard distribution, pricing and administration of pharmacy benefits to impact all plan sponsors and their participants. In simplified terms, the rule seeks the following changes:

- Eliminate the safe harbor protections for retrospective rebates kept by PBMs and plan sponsors.

- Create safe harbor protections for PBM-negotiated discounts applied to individual drugs in real time at the point-of-sale.

- Provide a pathway for PBMs to continue being reimbursed by pharmaceutical manufacturers for bona fide services through transparent service fees that are not tied to the list price of drugs.

The proposed rule seeks to eliminate the drastic difference between the list prices of drugs and the net prices after rebates. By doing so, it is believed to deliver lower out-of-pocket costs for beneficiaries on branded products, greater transparency into net prices of drugs, lower federal government spending and lower future drug price increases. If implemented, the Centers for Medicare & Medicaid Services (CMS), through the CMS Office of the Actuary, believe that individual premiums would increase between $3-$5 per beneficiary per month, but that out-of-pocket costs would be reduced by $3-$8 per beneficiary per month. It should be noted that these are averages and the individual impact would vary since 85 percent or more of the prescriptions dispensed are for generics, which typically do not include manufacturer rebates.

FOR EMPLOYERS HEALTH PLAN SPONSORS:

The team at Employers Health will continue to monitor activities surrounding this proposed rule, including the comments provided by applicable stakeholders and work with our clients and PBM suppliers to ensure we have a plan that keeps us ahead of any potential impacts to our contracts or program designs. Plan sponsors should consider modeling the impact of point-of-sale rebates on both its participant premium contributions and its cost sharing parameters such as deductibles, co-insurance and maximum out-of-pocket thresholds.

Employers Health does not keep any part of the rebates collected on behalf of our clients and passes through 100 percent of what we negotiate with the PBMs. Likewise, a recent third-party assessment of CVS showed that it was appropriately paying plan sponsors the rebates it was collecting on their behalf and collecting rebates from manufacturers in accordance with the contracts between those organizations. In short, we do not anticipate the economics of our PBM contracts to be altered significantly due to the market-leading and transparent terms that it contains. We will monitor this rule and keep you up-to-date on any similar efforts to expand the concept into the commercial market.