

## Part III

### Administrative, Procedural, and Miscellaneous

26 CFR 54.9816-6T: Calculating the qualifying payment amount in 2025

#### **Notice 2025–12**

#### **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 2025 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,<sup>1</sup> 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, 2023 and 2024 was published in Revenue Procedure 2022–11, Notice 2022–11, Notice 2023–4 and Notice 2024–1.<sup>2</sup>

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

The QPA serves as the basis for calculating patient cost sharing for items or services subject to the surprise billing provisions of the No Surprises Act in certain circumstances. The QPA is also one of the factors considered by a certified independent dispute resolution (IDR) entity to determine which of two offers submitted

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<sup>1</sup> 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).

<sup>2</sup> Revenue Procedure 2022-11, 2022-3 IRB 449; Notice 2022-11, 2022-14 IRB 939, Notice 2023-4, 2023-2 IRB 321, and Notice 2024-1, 2023-2 IRB 314.

by parties to a payment dispute in the Federal IDR process best represents the value of a qualified IDR item or service as the out-of-network rate.

The QPA is generally the median of the contracted rates recognized by the plan or issuer on January 31, 2019, for the same or similar item or service that is provided by a provider in the same or similar specialty or a facility of the same or similar facility type and provided in the geographic region in which the item or service is furnished, increased for inflation. Pursuant to Treas. Reg. § 54.9816-6T(c), 29 CFR 2590.716-6(c), and 45 CFR 149.140(c), plans and issuers were first required to calculate the QPA for items and services furnished during 2022. Thus, 2019 generally is the base year for items and services furnished in 2022, increased for all subsequent years. The median contracted rate is determined with respect to all plans of the plan sponsor or all coverage offered by the issuer that are offered in the same insurance market. In general, for years after 2022, the plan or issuer must calculate the QPA by increasing the QPA determined for an item or service furnished in the immediately preceding year by the percentage increase, as published in annual guidance. QPAs determined based on later years (for example, QPAs for group health plans or health insurance issuers not offering coverage in 2019 or items or services not covered in 2019) are adjusted based on the year for which the QPA is first determined.

*In general*

Under Treas. Reg. § 54.9816-6T(c)(1)(i), 29 CFR 2590.716-6(c)(1)(i), and 45 CFR 149.140(c)(1)(i), 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 Treas. Reg. § 54.9816-6T(b), 29 CFR 2590.716-6(b), and 45 CFR

149.140(b))<sup>3,4</sup> 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.<sup>5</sup> 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.

Pursuant to Treas. Reg. § 54.9816-6T(c)(1)(ii), 29 CFR 2590.716-6(c)(1)(ii), and 45 CFR 149.140(c)(1)(ii), for an item or service furnished during 2023 or a subsequent year, the plan or issuer must calculate the QPA by increasing the QPA determined for such an item or service furnished in the immediately preceding year, by the percentage increase as published by the Treasury Department and the IRS.

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<sup>3</sup>As modified by the August 24, 2023, opinion and order 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.), and the October 30, 2024, Fifth Circuit opinion and order in *Tex. Medical Ass'n, et al. v. U.S. Dep't of Health & Human Servs et al.*, Case No. 23-40605 (5th Cir.), that partially reversed the district court's order. The Departments of Labor, Health and Human Services, and Treasury, and the Office of Personnel Management are reviewing the Fifth Circuit's decision and intend to issue further enforcement guidance in the near future.

<sup>4</sup> 5 U.S.C. 8902(p) requires that contracts with carriers under the Federal Employees Health Benefits (FEHB) Act comply with the protections against surprise billing. Accordingly, the guidance provided in this notice applies to FEHB carriers to the extent consistent with their contracts. See 5 CFR 890.114.

<sup>5</sup> 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 Treas. Reg. § 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).

### *New plans and coverage*

Under Treas. Reg. § 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 of the contracted rates for an item or service provided in the geographic region, the plan or issuer must determine the QPA pursuant to Treas. Reg.

§ 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 (or the first coverage year for the item or service with respect to the plan or coverage). 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.<sup>6</sup>

### *Insufficient information; newly covered items and services*

Pursuant to Treas. Reg. § 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 (or, in the case of a newly covered item or service, during the first coverage year for the item or service

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<sup>6</sup> 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 Treas. Reg. § 54.9816-6T(c)(2)(ii), 29 CFR 2590.716-6(c)(2)(ii), and 45 CFR 149.140(c)(2)(ii).

with respect to the plan or coverage), 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 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 Treas. Reg. § 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. 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 Notice 2024–1, the percentage increase from 2023 to 2024 is 1.0543149339.

*New service codes*

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 Treas. Reg. § 54.9816-6T(c)(4)(i), 29 CFR 2590.716-6(c)(4)(i), and 45 CFR 149.140(c)(4)(i).

Under Treas. Reg. § 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 Treas. Reg. § 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 2025 over the preceding year is the average CPI-U for 2024 over the average CPI-U for 2023. Pursuant to this calculation, the percentage increase from 2024 to 2025 is 1.0317904930. Further, pursuant to prior notices, 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 2025 using the cumulative percentage increase, the "base year" QPA is multiplied by the cumulative percentage increase for the year the base QPA originated. A plan or issuer may choose whether to use the cumulative percentage increase or the percentage increase, but the selected method must be applied consistently for all QPAs calculated for items and services furnished during 2025. 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 2024	PERCENTAGE INCREASE FOR QPA FROM 2024 TO 2025	CUMULATIVE PERCENTAGE INCREASE FOR QPA FROM BASE YEAR TO 2025
2019	1.2089777165	1.0317904930	1.2474117141
2021	1.1693822450	1.0317904930	1.2065574831
2022	1.1353476955	1.0317904930	1.1714409585
2023	1.0543149339	1.0317904930	1.0878321254
2024	1.0000000000	1.0317904930	1.0317904930

Consult Notice 2024–1 regarding the application of these percentage increases.

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

The effective date of this notice is January 1, 2025.

#### **SECTION 5. DRAFTING INFORMATION**

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

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