



For your information

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## HHS Issues Bulletin on Definition of Essential Health Benefits

On December 16, 2011, HHS released a bulletin that describes its suggested regulatory approach for defining an essential health benefit (EHBs). The bulletin only addresses how EHBs would be defined for individual plans and employer plans in the small group market, and it does not discuss how EHBs would be defined for large employer plans.

### Background

The Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively PPACA), requires that all non-grandfathered health plans in the individual and small group markets cover EHBs beginning January 1, 2014. This requirement applies to coverage both inside and outside of the exchanges. A small employer is defined as an employer that employed on average no more than 100 employees in the preceding calendar year.

PPACA defines EHBs to include items and services within the following ten benefit categories:

- Ambulatory patient services
- Emergency services
- Hospitalization
- Maternity and newborn care
- Mental health and substance use disorders, including behavioral health treatment
- Prescription drugs
- Rehabilitative and habilitative services and devices
- Laboratory services
- Preventative and wellness services and chronic disease management
- Pediatric services, including oral and vision care

PPACA requires that the Department of Health and Human Services (HHS) ensures that the scope of EHBs are equal to the scope of benefits provided under a “typical” employer plan. PPACA requires the

Department of Labor to conduct a survey of employer-sponsored coverage to determine benefits typically covered by employers.

Large employer plans, whether insured or self-funded, are not required to cover EHBs. However, because these plans are prohibited from imposing annual or lifetime dollar limits on EHBs, knowing what items and services constitute EHBs is very important to them.

#### INSIGHT

**The definition of EHBs will determine whether a large employer plan can impose annual or lifetime dollar limits on treatment of conditions such as autism, bariatric surgery, and in-vitro fertilization.**

### HHS Bulletin on EHBs

On December 16, 2011, HHS released a [bulletin](#) that describes a suggested regulatory approach for defining EHBs. The bulletin describes the suggested approach that HHS may propose in future regulations.

Rather than set a national standard for EHBs, HHS would permit each state to choose a benchmark plan. The services covered by the selected plan and any limits imposed by that plan would, in effect, define EHBs for that state. In selecting the benchmark plan, a state would be able to choose one of the following options:

- The largest plan of any of the three largest small group plans, by enrollment, in the state,
- Any one of the three largest state employee health plans by enrollment,
- Any one of the three largest federal employee health plan options by enrollment, or
- The largest HMO plan offered in the state's commercial market by enrollment.

The benchmark plan must include coverage for all ten of PPACA's statutory categories of benefits. To the extent that the benchmark plan fails to cover any of those categories of benefits, those categories must be covered based on the benefits provided under another of the benchmark options.

The HHS bulletin only addresses what items and services are considered EHBs, and it does not discuss cost sharing under the plan, actuarial value, or the definition of "minimum essential coverage." Future guidance will address these issues. Importantly, what will be considered EHBs for purposes of the prohibition on annual or lifetime dollar limits also was not discussed in the HHS bulletin.

## INSIGHT

A state-by-state definition of EHBs is impractical for large employer plans that may have employees in many different states. In the absence of clear guidance on what constitute EHBs for purposes of annual or lifetime dollar limits, it appears that plans will still have to rely on the Agencies' representation that they will take into account a "good faith effort" to comply with a reasonable interpretation of the term. (See our July 2, 2010 [For Your Information](#).)

The deadline for comments on the HHS bulletin is January 31, 2012.

## Conclusion

With the lack of guidance on the definition of EHBs for large employer plans, employers should continue to make a "good faith effort" to comply with the prohibition on annual and lifetime dollar limitations on EHBs. Buck's consultants can assist with that review.

### Buck Can Help

- Review current compliance with the prohibition on annual and lifetime dollar limits on EHBs
- Draft comments to the HHS bulletin
- Keep you advised of new developments related to the definition of EHBs