



For your information

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States Begin Defining Essential Health Benefits

States are currently choosing the health plans they will use to define which essential health benefits (EHBs) will be required of certain individual and small-group policies, and of the qualified health plans offered on the state exchanges. These definitions are also important to employers that must comply with the lifetime and annual dollar limit restrictions on EHBs. Absent additional government guidance, employers should develop working definitions of EHBs that specify which items and services fall within each EHB category. Failure to comply with the protections for EHBs could have tax or legal consequences.

Background

The Patient Protection and Affordable Care Act (ACA) requires that all non-grandfathered individual insurance policies, non-grandfathered fully insured small-group products, and qualified health plans offered on exchanges cover essential health benefits (EHBs) starting January 1, 2014. Fully insured plans offered to employers with more than 100 employees, self-insured group health plans, and grandfathered small-group and individual policies do not have to cover EHBs. However, most insured and self-funded group health plans must comply with the lifetime and annual dollar restrictions on EHBs. These restrictions were effective for plan years on or after September 23, 2010.

Definition of EHB

EHBs must be equal in scope to the benefits provided under a “typical employer plan” and include at least 10 categories of items and services, including ambulatory patient services, hospitalization, prescription drugs, and pediatric oral and vision services. The Department of Health and Human Services (HHS) released a bulletin and fact sheet that provide a regulatory approach to defining EHBs. (See our December 22, 2011 [For Your Information](#).) Rather than establish a national standard for EHBs, the guidance allows each state to choose a “benchmark” plan. The services covered by the selected benchmark plan, and any limits imposed by that plan, would define EHBs for that state.

Choosing a benchmark plan

States were asked to submit their list of EHB benchmark plans to HHS by the end of September. However, it appears that many states missed that deadline. If a state does not select a benchmark plan, HHS will set the benchmark on the basis of the small-group insured plan in that state with the largest enrollment. (The [Appendix](#) includes a summary of each state's current decision on EHBs.)

Implications of EHB Definition for Large-Group Health Plans

As noted above, although large-group health plans, whether insured or self-funded, are not required to cover EHBs, ACA prohibits most health plans from imposing lifetime and annual dollar limits on EHBs. Armed with only a general definition of EHBs, many large employers have made a "good faith effort" to comply with the prohibition against annual and lifetime dollar limits on EHBs.

HHS issued a series of [Frequently Asked Questions](#) earlier this year further describing the process that will be used to define an EHB. In its responses, HHS reaffirmed that it is continuing to work with group health plans that make a good faith effort to comply with the prohibition against annual and lifetime dollar limits on EHBs. HHS also stated that a large-group health plan can use any definition of EHB that is "authorized" by HHS.

INSIGHT

Although the guidance allowing large-group health plans to use any of the HHS-authorized definitions of an EHB is welcome, this approach requires a plan sponsor to select from among the multiple available options. And it still isn't clear if employers with operations in multiple states can pick only one approach.

The states that have defined their EHBs have considered including various items and services that large-employer plans typically subject to coverage limitations. Examples include:

- Infertility coverage
- Chiropractic and acupuncture services
- Hospice and palliative care
- Speech therapy
- Physical therapy
- Bariatric surgery
- Hearing exams and aids
- Pediatric vision and dental services
- Organ transplants.

Large-group health plans that limit the annual or lifetime dollar benefits for such services will need to modify those limits if they are considered EHBs.

Some employers may consider converting annual and lifetime dollar limits into other types of cost management restrictions, such as visit, day, or frequency limits. However, the HHS guidance also requires that the application of these other limits result in benefits that are actuarially equivalent to the benefits provided under the benchmark plan. The guidance provides an example in which the benchmark plan covers up to 20 physical therapy visits and 10 occupational therapy visits. According to the guidance, a plan could instead cover up to 10 physical therapy visits and 20 occupational therapy visits as long as that benefit structure is actuarially equivalent to the benchmark plan.

INSIGHT

An open question is whether the HHS guidance means that even plans with limits such as day or visit limitations on EHBs need to modify their design to comply with the EHB requirements. Sponsors of large-group health plans will need to decide on an approach to complying with the EHB requirements and incorporate it into their 2014 benefit strategy. Because it is likely that almost all benefits provided under a large-group health plan will be considered EHBs, this will require an in-depth review of the benefit design.

Closing

Absent additional government guidance, employers should develop working definitions of EHBs that specify which items and services fall within each EHB category. It may be helpful also to review benchmark data describing typically covered benefits. Failure to comply with the protections for EHBs could have tax or legal consequences, so it is advisable that employers discuss these definitions with legal counsel.

Appendix: State Snapshot on EHB Selection

Last Updated: October 11, 2012

Alabama	10/1/12: Governor Bentley Declines Decision on ACA Component; Cites Lack of Proper Options & Information 10/1/12: Letter to HHS Secretary Kathleen Sebelius
Alaska	No Activity
Arizona	9/28/12: Governor's Letter to Gary Cohen, Director, Office of Consumer Information and Insurance Oversight on Essential Health Benefits
Arkansas	9/21/12: Selection of Arkansas's Essential Health Benefits Benchmark Plan
California	AB 1453: Health Care Coverage: Essential Health Benefits Signed: 9/30/12 SB 951: Health Care Coverage: Essential Health Benefits Signed: 9/30/12 6/22/12: Transcript - Dept. of Insurance Public Hearing on Essential Health Benefits 5/22/12: California's Benchmark for Essential Health Benefits
Colorado	9/27/12: Final Colorado Essential Health Benefits Benchmark Plan Selection 9/27/12: Colorado's Essential Health Benefits Final Benchmark Plan Selection Chart 9/27/12: Frequently Asked Questions Regarding Essential Health Benefits Draft Recommendation
Connecticut	9/27/12: Conn. Health Insurance Exchange Board of Director's Meeting
Delaware	9/6/12: Essential Health Benefits and Qualified Health Plans Selection Process Recommendations
District of Columbia	8/29/12: District of Columbia Health Benefits Exchange Insurance Subcommittee Essential Health Benefits Bulletin
Florida	9/28/12: Governor Scott's Letter to HHS Secretary Kathleen Sebelius (State Refor(u)m)
Georgia	No activity
Hawaii	10/1/12: Hawaii Selects Healthcare Benefits Package 10/2/12: Hawaii Benchmark Benefit Package Listing 10/1/12: Hawaii Benchmark Benefits under the PPACA

Idaho	No activity
Illinois	9/28/12: Essential Health Benefits Workgroup Recommendation on Benchmark Selection 9/12/12: Essential Health Benefits: Basic Facts and State Options 9/12/12: Comparison of Benchmark Options
Indiana	10/01/12: Essential Health Benefits Status Letter to HHS
Iowa	10/1/12: Governor Branstad's Letter to HHS Secretary Kathleen Sebelius (State Reform)
Kansas	9/24/12: EHB Analysis for Governor 9/5/12: Transcript of Essential Health Benefits Hearing
Kentucky	10/1/12: Statement on Recommendation for Benchmark Plan
Louisiana	9/27/12: DHH Letter to Federal Health Department on Essential Health Benefits Benchmark Plan
Maine	1/17/12: Essential Health Benefits Comparison
Maryland	9/27/12: Health Care Reform Coordinating Council Selects Maryland's Essential Health Benefit Plan
Massachusetts	4/27/12: EHBs Summary and Questions for Stakeholder Feedback EHB Benchmark Plan Options - Updated April 19, 2012
Michigan	9/28/12: Governor's Benchmark Selection 9/25/12: EHB Final Report
Minnesota	8/16/12: Essential Health Benefits: Basic Facts & Frequently Asked Questions 7/23/12: Essential Health Benefits Chart 2/27/12: Access Work Group - Feedback and Recommendations Essential Health Benefits 2/9/12: Essential Benefit Set – Default Scenario
Mississippi	6/13/12: Final Recommendations of the Exchange Advisory Board on Essential Health Benefits
Missouri	No activity
Montana	No activity

Nebraska	10/1/12: Gov. Heineman Submits "Nebraska Option" for Obamacare Deadline 8/16/12: Nebraska's Health Insurance Exchange Overview of the Essential Health Benefits Public Session
Nevada	10/1/12: Selection of Nevada's Benchmark Plan Nevada's Essential Health Benefits Presentation
New Hampshire	9/25/12: Essential Health Benefits Selection Letter
New Jersey	10/1/12: N.J. Senate Panel Approves Health Exchange Bill, Despite Uncertain Future (NJ Star Ledger) - "Christie announced he intended to miss a federal deadline today outlining which "essential health benefits" the state's exchange would offer once it began enrollment in 2014."
New Mexico	7/25/12: Primer: Essential Health Benefits Package
New York	10/1/12: Selection of an Essential Health Benefits Benchmark Plan 9/21/12: Essential Health Benefits for the New York Health Benefits Exchange (Milliman)
North Carolina	5/14/12: Analysis of Benchmark Plan Options Study Report
North Dakota	10/1/2012: NDID Statement on Essential Health Benefits Benchmark Plan 7/3/2012: HHS' Response to Commissioner Hamm's March 1 Request for Benchmark Plan Deadline Extension 3/1/2012: Commissioner Hamm Requests Deadline Extension for Determining North Dakota's Benchmark Plan
Ohio	9/28/12: Department of Insurance Letter to HHS Secretary Kathleen Sebelius (State Refor(u)m)
Oklahoma	10/1/12: Governor Fallin's Letter to HHS Secretary Sebelius (State Refor(u)m)
Oregon	8/21/12: Final Recommendations Submittal to Governor Kitzhaber
Pennsylvania	9/26/12: Letter to HHS Conveying the Department's Current Position on Essential Health Benefits 8/29/12: EHB Report - examining the health plans that could serve as the benchmark plan in Pennsylvania, as outlined in federal guidance Report Summary Full Report
Rhode Island	9/6/12: Presentation to Exchange Board: Recommending A Benchmark List of Covered Services for RI

South Carolina	Essential Health Benefits (EHB): Oral and Written Comments
South Dakota	No activity
Tennessee	9/30/12: Governor's Haslam's Letter to HHS Secretary Kathleen Sebelius (State Refor(u)m) 8/21/12: Public Comments about Essential Health Benefits
Texas	Opportunities for Public Input on Federal Health Reform Issues Essential Health Benefits
Utah	8/16/12: Minutes of The Health System Reform Task Force 5/17/12 (Modified 6/7/12): Essential Health Benefits Presented to the Health System Reform Task Force
Vermont	10/4/12: Green Mountain Care Board Completes Benefits Decisions 9/20/12: Discussion of the Administration's recommendations for benchmark benefits 8/13/12: One Page Essential Health Benefits Review
Virginia	6/13/12: Essential Health Benefit Subcommittee Recommendations
Washington	10/9/12: Essential Health Benefits Rule: Rule Making Timeline 9/18/12: Essential Health Benefits Designation, Supplementation and Establishment of Scope and Limitation Requirements (Proposed Rule) 7/18/12: Rule Making Starts For Essential Health Benefits
West Virginia	9/28/12: Governor Tomblin's Letter to HHS Secretary Kathleen Sebelius (State Refor(u)m)
Wisconsin	9/28/12: Commissioner of Insurance Nickel Letter on Essential Health Benefits
Wyoming	No activity