

EHB-Benchmark Changes and Other Health Care Reform Updates

Tuesday, June 5th, 8:00 pm EDT

Toll-free dial-in: 1-866-952-8437

New state actions + new federal regulations = health care policy
“refit” – even without “repeal & replace”

WHERE DOES HEALTH CARE REFORM STAND?

The ACA: Exploding, Imploding, or Stabilizing?

- First day in office: Executive order on reducing health care regulations
- March: Letters to governors inviting 1115 (Medicaid) waivers and 1332 (Marketplace) waivers
- April: Cut open enrollment in half
- August: Cut enrollment outreach
- October: Second executive order & cutting off cost-sharing reductions (CSRs)
- December: Individual mandate repealed
- January 2018: Kentucky granted first-ever Medicaid work requirement waiver
- April: Regulation allowing skinnier EHB packages
- Any day now???: Regulations expanding alternatives to ACA-compliant plans

The State Perspective: A Fork in the Road



New federal flexibility allows states to set less generous levels of coverage

POSSIBLE EHB-BENCHMARK CHANGES

What are “Essential Health Benefits?”



Complete list of EHBs in the Affordable Care Act

1. Ambulatory patient services
2. Emergency services
3. Hospitalization
4. Maternity and newborn care
5. Mental health and substance use disorder services, including behavioral health treatment
6. Prescription drugs
7. Rehabilitative and habilitative services and devices
8. Laboratory services
9. Preventive and wellness services and chronic disease management
10. Pediatric services, including oral and vision care

Source of image: http://modernmedicines.com/small_essential_health_benefits.png

Why require Essential Health Benefits?

- Establish a minimum federal standard across all plans in all states
- Reflect the benefits included in a typical employer plan
- Provide corrections to deficiencies in the individual and small group market
 - “Bulk up” skinny plans
 - Increase access to maternity, mental health and substance use disorder, pediatric oral and vision, and habilitative services
- Provide some consistency to benefits to make it easier to compare and choose

How did states implement the EHBs?

- National benefit standards were expected, but that didn't happen
- Instead, each state chose or was assigned a “benchmark” plan, based on an existing plan, to serve as a model for that state
 - Benchmark plans have to be supplemented if they don't cover all EHBs
 - Habilitative services received a lot of attention because it was a “new benefit”
- Find your state's benchmark at:
<https://www.cms.gov/ccio/resources/data-resources/ehb.html>

Benchmark Timeline

- States have chosen benchmark plans (or been assigned by default) twice
 - 2012: States selected first benchmarks
 - 2014-2016: First benchmarks in effect
 - 2015: New benchmarks selected
 - 2017-2018: Second set of benchmark plans in effect
 - 2018: States can select new benchmarks for 2020
 - 2020 and thereafter: States allowed to update their benchmark every year

Get Ready for Benchmark Changes!

- HHS Notice of Benefit and Payment Parameters for 2019 (issued April 9, 2018) implemented a new framework for benchmark selection
- HHS estimates that 10 states will make benchmark changes in any given year
- States will be allowed to make their EHBs less generous by:
 - Selecting another state's benchmark
 - Replacing category or categories with those from another state's benchmark
 - Selecting a new set of benefits to become the state's benchmark

Could habilitation be the first to go?

- Congressional Budget Office (CBO): the rehab and hab EHB is one of the first states would probably waive
- States would exclude benefits, like hab, that were not covered before the ACA and/or affect a small share of enrollees
- Maternity care, mental health and substance use services, pediatric dental also likely to be removed

Source: Congressional Budget Office, cost estimate for H.R. 1628, the American Health Care Act of 2017 (May 2017)

Will there be implications beyond the individual market?

- 150+ million get health insurance on the job
- Eroding EHBs could effect their benefits, too
- ACA's ban on annual and lifetime limits and caps on yearly out-of-pocket spending apply to individual, small group, and large group plans
- Limits on annual and lifetime limits, caps on yearly out-of-pocket spending *apply only to services defined as EHBs*

How can the public weigh in on the EHB-benchmark?

- New 2020 benchmarks must be finalized by July 2, 2018
- States must provide a notice and comment period w/details posted on a relevant state website
- Info could come from the department of insurance, governor's office, legislature, or another state entity

The Administration is encouraging states to undercut the ACA by expanding alternatives to ACA-compliant coverage

NEW WAYS TO CIRCUMVENT THE EHBS

Presidential Executive Orders

- **January 2017 Executive Order**
 - Told federal agencies to waive, defer, grant exemptions from and delay implementation of burdensome health care regulations

- **October 2017 Executive Order**
 - Make it easier to form and join Association Health Plans (AHPs)
 - Lengthen short-term plans from 3 to 12 months
 - Expand employer-funded Health Reimbursement Arrangements (HRAs)

How could states safeguard the EHBs? Some examples:

- Connecticut passed a law codifying the ACA's 10 EHB categories into state law
- New York issued an emergency regulation requiring coverage of the federal EHBs



Association Health Plans (AHPs)

- New framework would treat AHPs sold to small businesses & self-employed like large group plans, meaning they wouldn't be subject to most ACA market standards
- Not required to cover EHBs
- Couldn't cherry pick healthy enrollees by turning away people with pre-existing conditions
- But could charge higher premiums to women, older people, members of certain professions
- Not clear if the federal government intends to preempt state regulation

Short-Term Plans

- Short-term, limited-duration insurance designed to bridge short gaps in coverage
- Proposal would allow short-term plans to be sold for longer periods of time – up to 364 days
- Pre-existing condition nondiscrimination and all other ACA standards wouldn't apply
- Wouldn't have to cover the EHBs

What are the hazards of short-term plans?

- Attractive to healthy people who don't want to pay for services they don't think they'll use
- Some will be denied entry because of pre-existing conditions
- Some will sign up, then find services they need aren't covered or are very limited
- Premiums will rise for unsubsidized enrollees in the individual market as healthy people leave the risk pool

How could states regulate short-term plans?

- Prohibit the sale of short-term plans
- Apply EHBs and other ACA standards
- Make them non-renewable
- Limit their duration to 3 months, 6 months, etc.
- Make them terminate at the end of the calendar year
- Assess a user fee to fund reinsurance
- Make them meet medical loss ratio requirements
- First determine eligibility for ACA subsidies before enrolling
- Impose strong consumer disclosure rules

How are states addressing short-term plans?

- Virginia governor vetoed a package of bills meant to enable changes allowed by Trump Administration proposed rules
- Maryland signed into law a bill limiting short-term plans to 3 months and making them nonrenewable



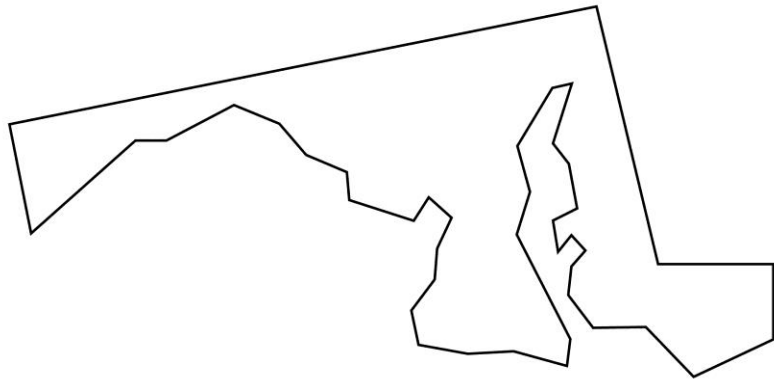
“Insurance for insurance companies” can help stabilize the individual market

REINSURANCE WAIVERS

What is reinsurance?

- The government pays part of the claims of enrollees who incur high health care costs
- Lowers insurance companies' costs
- Resulting in lower premiums for consumers
- The ACA had a built-in reinsurance program that expired in 2016
- Alaska, Oregon, & Minnesota have established reinsurance programs with federal waivers

Case Study: Maryland



- Passed a law providing for a reinsurance program thru a 1332 waiver
- And a related law imposed an insurer tax to fund reinsurance & restricted short-term plans