

CMS Publishes RFI on ACA Essential Health Benefits

Insights

12.19.22

On December 2, 2022, the Centers for Medicare & Medicaid Services (CMS) published a [request for information \(RFI\)](#) related to Essential Health Benefits (EHBs) under the Affordable Care Act (ACA). CMS is seeking public feedback on how EHBs are described under the ACA's state benchmarking approach, and whether typical employers plans have become more or less generous since 2014. CMS is also seeking comments whether it is necessary to make further changes to the EHB requirements to fill in benefit gaps of currently unmet needs. Finally, CMS is seeking comments related to the coverage of prescription drugs and substitutions of EHBs.

As amended, the ACA requires non-grandfathered individual and small group health insurance plans, regardless of whether they are offered through an exchange, to cover EHBs, which include items and services in ten benefit categories: (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; and (10) pediatric services, including oral and vision care. Applicable plans must provide coverage of items and services in the above benefit categories, in accordance with their State's EHB-benchmark plan, which serves as a reference plan for the benefits considered as EHBs in a state.

While CMS concedes that the current state EHB-benchmark plans describe EHBs in differing ways, CMS does not believe that such differences have caused overt consumer harm. Nevertheless, through this RFI, CMS is seeking to ensure that plans are interpreting the EHB-benchmark plan documents in a manner that provides EHB coverage to consumers, consistent with applicable requirements. Thus, CMS is gathering information which may impact requirements for State EHB-benchmark plans. Namely, CMS is requesting comment to determine whether there are (1) barriers to accessing services due to coverage or cost, or (2) changes in medical evidence and scientific advancement, and if so, how EHB requirements may be modified to address these issues. Because EHBs impact all individual and small group health plans, any potential modifications to the scope EHB requirements may have a tremendous impact on millions of Americans and the providers who serve them.

Comments on the RFI will be accepted through January 31, 2023.

Providers and consumer-advocacy groups are encouraged to review the RFI and consider submitting comments. HLB understands the importance of building a strong administrative record, both in directing an agencies decision and, where

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applicable, in a court challenge to determine whether the agency reviewed the relevant data and articulated a satisfactory explanation for its decision making. If you or your organization are interested in submitting comments in response to the RFI, please do not hesitate to contact [Alicia Macklin](#) in Los Angeles, [Paul Garcia](#) in San Diego, [Katrina Pagonis](#) and [Maydha Vinson](#) in San Francisco, or your regular Hooper, Lundy & Bookman contact.