

CONSUMER LIAISON COMMITTEE

ROLE OF STATE REGULATORS IN ADDRESSING DISCRIMINATORY BENEFIT DESIGN

NAIC SPRING 2022 NATIONAL MEETING
KANSAS CITY, MO

Carl Schmid

D Ojeda

Silvia Yee

Proposed 2023 NBPP Rule – Benefit Design

§ 156.125 Prohibition on discrimination. (a) An issuer does not provide EHB if its benefit design, or the implementation of its benefits design, discriminates based on an individual's age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions. *A non-discriminatory benefit design that provides EHB is one that is clinically-based, incorporates evidence-based guidelines into coverage and programmatic decisions, and relies on current and relevant peer-reviewed medical journal article(s), practice guidelines, recommendations from reputable governing bodies, or similar sources.*

Examples of Presumptive Discrimination

- Limitation on Hearing Aid Coverage Based on Age
- Autism Spectrum Disorder (ASD) Coverage Limitations Based on Age
- Age Limits for Infertility Treatment Coverage When Treatment Is Clinically Effective for the Age Group
- Limitation on Foot Care Coverage Based on Diagnosis (Whether Diabetes or Another Underlying Medical Condition)
- Coverage of EHB for gender-affirming care
- Access to Prescription Drugs for Chronic Health Conditions: Adverse Tiering

Prescription Drugs for Chronic Conditions

- No adverse tiering
 - Placing all or majority of drugs to treat a condition on highest tier
 - Discourages enrollment of those with significant health needs
- Tiering can not rely on cost alone, must be clinically based & balanced
- Allows reasonable medical management
- Additional practices also constitute discrimination
- Enforcement needed
 - [QHP Certification for Rx](#)
 - Additional tools “coming soon”

Access and Coverage for Transgender People

- High levels of unmet healthcare need among the transgender community.
 - Providers and plans need to mitigate harmful healthcare encounters and damaged trust
- **Gender affirming care is medically necessary and saves lives**
 - **Improved mental health, and quality of life overall**
- State regulators can provide clear guidance on nondiscriminatory coverage and outreach
 - States that have provided explicit guidance: Colorado, Virginia, Nevada, and Montana

Rehabilitation & Habilitation Services & Devices

- Critical medical needs for people with chronic conditions
- Medically needed therapies that slow progressive symptoms and restore functional capacity (e.g., long COVID)
- Children and adults need therapies to achieve functions for the first time
- Mental health services and therapy
- Durable Medical Equipment
- Regulators: issue clear examples of discriminatory benefit design, rotate “deep dive” review of key benefit categories

Contraception Services

- Coverage of extended supply of birth control: reduces access barriers (like transportation, childcare, time off work, etc.) to getting pill packs on time. Compelling UCSF study connects this coverage with reductions in pregnancies and abortions
- Increased access to Long-acting Reversible Contraception (LARC): a study showed that people in high deductible health plans chose LARCs at a higher rate after the ACA benefit EHB went into effect than prior to it
- Reducing barriers to contraception helps women who face healthcare disparities for various and compound reasons