Advancing Health Equity Through Essential Health Benefits

NAIC Special Committee on Race and Insurance
Workstream 5
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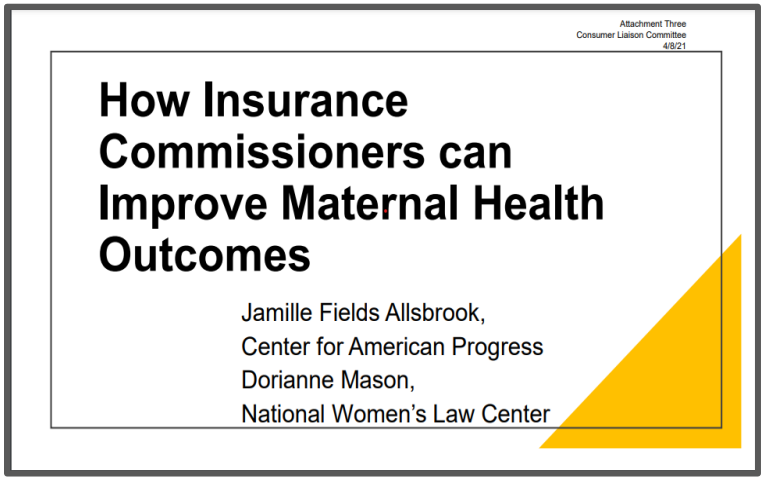
Wayne Turner, National Health Law Program
Héctor Hernández-Delgado, National Health Law Program
Erin Miller, Colorado Children's Campaign

Roadmap

1. Addressing health disparities by adding or improving health benefits
2. Federal regulatory framework - EHB benchmark options and updating
3. Lessons learned from Colorado
4. Best practices and recommendations for state regulators

Addressing racial disparities in health care

- NAIC examining complex contributing factors
  - *e.g.*, affordability, utlization management, access to providers, culturally competent care, social determinants of health
- Adding or improving benefits
  - Black maternal mortality, treatment for opioid use disorder, hearing aids
- Requiring new benefits ⇨ defrayal
- ACA requires states to defray the costs in Qualified Health Plans of benefit mandates enacted after December 31, 2011 42 U.S.C. § 18031(d)(3)(B)(ii)



➢ **Adding or improving benefits through EHB benchmarking does not trigger defrayal**

Example #1: Benefit Mandate

- In 2014, Utah passed legislation requiring plans to provide Applied Behavioral Analysis (ABA) therapy for children with Autism Spectrum Disorder and expanded the requirement in 2019 (S.B. 57, 60th Leg., Gen. Sess. (Utah 2014); S.B. 95, 63rd Leg., Gen. Sess. (Utah 2019).
- Kudos to Utah Insurance Department for setting up defrayal
  - Calculated cost of benefit and established a process to reimburse QHPs for the cost (U.A.C. R590-283)
- **Defrayal costs to state:**
  - **FY 2020 - $1.8 million**
  - **FY 2021 - $1.9 million**
  - **FY 2022 - $2 million**

(Regulatory Impact Summary Table, Appendix 1, 22 Utah Bull. DAR File No. 44181)

Example #2: Updating EHB Benchmark Plan

South Dakota updated its EHB benchmark to require ABA therapy

1. Commissioned an actuarial analysis comparing current benchmark to 2017 benchmark options
2. States can add or improve benefits up to the most generous option available in 2017
3. Adding or improving benefits through benchmarking **does not trigger defrayal** – see CCIIO Frequently Asked Questions on Defrayal of State Additional Required Benefits

Category	Plan	Relative Benefit Value
Small Group	Wellmark Blue Select PPO Primary (Default)	0.0%
	Sanford Signature Series	-1.0%
	DAKOTACARE Choice Group	0.1%
State Employee	$500 Deductible	0.3%
	$1,000 Deductible	0.3%
	$1,800 Deductible HSA	0.3%
FEHBP	BCBS Standard	9.1%
	BCBS Basic	8.6%
	GEHA Standard	10.1%
HMO	Sanford Signature Series	-1.0%

State of South Dakota Analysis of 2021 State Benchmark Options - https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/actuarial%20report%20and%20certificate_sd.pdf.

Key considerations for EHB benchmarking

- States have considerable EHB flexibility under federal rules
- Many states have no formal process for EHB benchmark selection
- Forty-two states plus the District of Columbia currently use a small group plan as the state's EHB benchmark
- Most states can add or improve benefits without exceeding the EHB generosity test and without triggering defrayal
- Seven states have added/improved benefits with minimal impact on premiums

EHB Basics and Background

What are Essential Health Benefits

- Services that must be covered by non-grandfathered individual and small group market plans and by Medicaid Alternative Benefit Plans

- Limited cost-sharing

- Sec. 1302 of the ACA:

  “the Secretary shall define the essential health benefits, except that such benefits shall include *at least*…”

Ten EHB Categories of Benefits

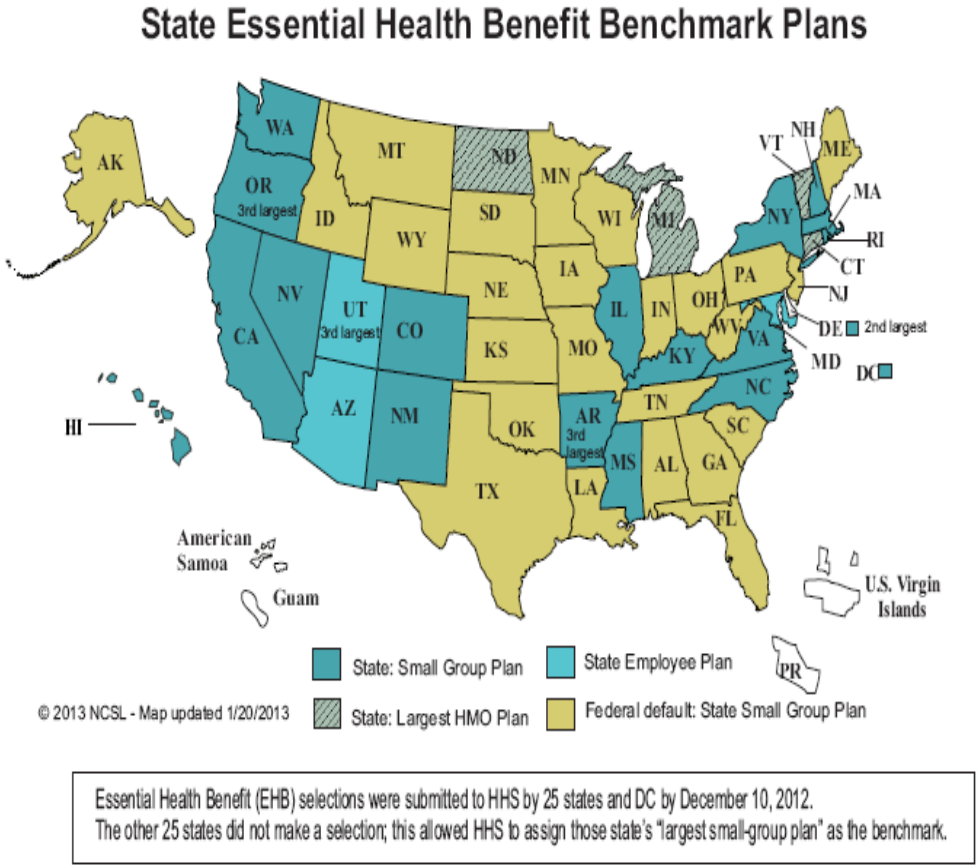
- Ambulatory patient services
- Emergency services
- Hospitalization
- Maternity and newborn care
- Mental health and substance use disorder services
- Prescription drugs
- Rehabilitative and habilitative services and devices
- Lab services
- Preventive and wellness services and chronic diseases and management
- Pediatric services, including oral and vision care

EHB Final Rule 2013 – Benchmarking

- Each state chooses a benchmark plan from:
  - 3 largest federal employee plans
  - 3 largest state employee plans in the state
  - 3 largest small group plans in the state
  - largest commercial HMO operating in the state

2013 default: Largest small group plan

2019 default: Previous year's benchmark



Essential Health Benefit (EHB) selections were submitted to HHS by 25 states and DC by December 10, 2012.
The other 25 states did not make a selection; this allowed HHS to assign those state's "largest small-group plan" as the benchmark.

Substantive changes to EHB benchmarking options for 2019+

- **Benchmarking Process:** Establishes new benchmark plan options:
  - Selecting EHB benchmark plan used by another state in 2017
  - Replacing one or more categories from the state's 2017 benchmark plan with the same category from another state's 2017 benchmark plan
  - Selecting new benefits to create a whole new benchmark plan

Benchmarking Process: Limits on New Benchmark Options

Generosity Test (Ceiling):

Benchmark plan may not include more generous benefits than the most generous of the ten benchmark options the state had available in 2017

Typical Employer Plan (Floor):

Benchmark plan may not be less comprehensive than any one of the 2017 benchmark options or largest employer plan in the state

A Note About Defrayal

- CCIIO clarified that states seeking new benefits/mandates through benchmarking will not be subject to defrayal
- However, switching from state mandate to benchmarking mandate is not permitted (state will have to defray in that case)
- Compliance with federal requirements:
  - Mandates not subject to defrayal when enacted to ensure compliance with federal rules
  - These mandates are also likely exempt from the generosity limit
- Changes in cost-sharing NOT subject to defrayal

But more guidance is needed!

Procedural requirements for benchmark selection

- **Public Process:** Requires states to provide *"reasonable notice and an opportunity for public comment on the state's selection of an EHB benchmark plan that includes posting a notice on its opportunity for public comment with associated information on a relevant state web site."*

  45 C.F.R. § 156.111(c)

- Vague and ill-defined, but CMS has discretion to reject benchmark plan selections if state fails to comply with procedural requirements.

Deadline for new EHB benchmark selection: First Wednesday in May

Colorado EHB benchmark update: progress made and lessons learned

Colorado 2023 benchmarking process and outcomes

Process

- Public bulletin/notice asking for stakeholder engagement
  - Specific outreach to consumer groups
  - Attendance required at all of three 2-hour virtual meetings
  - Meeting materials made publicly available
- Commenting on final proposal

Outcomes

- Improved health equity and behavioral health care
  - Gender affirming care
  - Opioid alternatives

Improving Health Equity through Benchmarking – Process Recommendations

- Industry groups have more people and power than consumers
- Challenge of timing of CMS process and legislative sessions
- Help consumer understand importance of this process
- Fundraise for consumer capacity to engage – requires significant advance notice
- Accountability to ensuring that people informing the process are diverse with regards to race, ethnicity, immigration status, income, etc.
    - Full disclosure of participants, consultants, conflict of interest
    - May require additional meetings, changing process, etc.
- Post all comments, testimony, etc. received
- Provide light-lift ways for consumer groups to inform the process **early** (surveys, etc.)
    - Before actuarial work is done

Improving Health Equity through Benchmarking – Service Recommendations

- Be data- and equity-centered
- Systemic and structural racism jeopardize health and wellbeing
  - Disparate rates of diabetes and poor perinatal outcomes
- Services important to diverse consumer groups:
  - Diabetic foot care
  - Postpartum home visits
  - ALL FDA-approved contraceptives
  - Home births

Best Practices for EHB Benchmark Updates

Best Practices for EHB Benchmark Updates

- **Engage** diverse stakeholders early on (including legislators in states that require legislation for benchmarking changes)
- **Ensure** consumer participation through open meetings, trainings, and a robust public comment period
- **Identify** unmet health needs and prioritize closing disparities through a data-driven approach
- **Recognize** that data gaps can perpetuate health disparities
- **Maximize** transparency
- **Establish** a formal regulatory framework for reviewing and updating the state's benchmark
- **Center** health equity

State Changes to EHB Benchmark Plans as of November 2022		
Vermont	• Annual hearing exam and one set of hearing aids per year each 3 years	2024+
Colorado	• Adds annual mental health wellness visit • Adds alternatives for pain management including chiropractic, physical therapy, cognitive therapy • Adds acupuncture • Requires gender affirming care	2023+
Oregon	• Mandatory coverage of buprenorphine • Automatic coverage of naloxone when opioids are prescribed at 50 MME or higher • Adds coverage of non-opioid alternatives to treat pain	2022+
Michigan	• Mandatory coverage of buprenorphine • Automatic coverage of naloxone when opioids are prescribed at 50 MME or higher	2022+
Illinois	• Cover alternative therapies for pain, such as topical anti-inflammatories • Remove barriers to obtaining buprenorphine products for opioid use disorder treatment • Cover at least one intranasal spray opioid reversal agent when initial prescriptions of opioids exceed certain limit • Cover tele-psychiatry care	2022+
New Mexico	• Removes benefit limits for prosthetics • Expands eligibility for weight loss drugs and programs • Adds coverage of 3 naloxone formulations • Adds benefits for artery calcification testing and hepatitis C	2022+
South Dakota	• Adds applied behavior analysis for Autism Spectrum Disorder	2021+

Resources

- NHeLP - Essential Health Benefits: Best Practices in Benchmark Selection
- NHeLP - Essential Health Benefits (EHB) benchmarking process
- CCIIO - Frequently Asked Questions on Defrayal of State Additional Required Benefits
- CCIIO - Information on Essential Health Benefits (EHB) Benchmark Plans | CMS

Contact us!

- Wayne Turner, NHeLP - turner@healthlaw.org
- Héctor Hernández-Delgado, NHeLP - hernandez-delgado@healthlaw.org
- Erin Miller, Colorado Children's Campaign - erin@coloradokids.org