

HHS ISSUES FINAL RULE ON ESSENTIAL HEALTH BENEFITS AND QUALIFIED PLANS

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Beginning in 2014, the Patient Protection and Affordable Care Act ("PPACA") requires certain health plans to cover essential health benefits ("EHB"), as that term is defined by the Secretary of Health and Human Services ("Secretary").¹ On July 20, the Secretary issued a final rule that establishes data reporting standards for certain issuers of health plans to support the definition of EHB.² Specifically, issuers of the three largest small group market products in each state must report information on covered benefits. The final rule also sets out a two-phased approach for recognizing accrediting entities for purposes of certifying qualified health plans ("QHPs").

Please feel free to reach us at the phone number or email address to the left if you have questions about this final rule or about how PPACA will impact your welfare benefit plans.

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Coverage for Essential Health Benefits. PPACA directs that, for plan years beginning on or after January 1, 2014, health insurance issuers offering non-grandfathered plans³ in the individual or small group market must ensure that the plans include coverage for EHB.⁴ EHB must reflect the scope of benefits covered by a typical employer plan and cover at least the following ten general categories of items and services: ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care.⁵ PPACA directs the Secretary to further define EHB, periodically review the EHB, and update the EHB as needed.⁶

Data Collection Requirements. Issuers of the three largest health insurance products in each state will be required to submit designated benefit and enrollment information to HHS. This information will be used to support the definition of EHB. The data collection requirements will apply to the issuers in each state that offer the three largest health insurance products, by enrollment, in that state's small group market.⁷ Issuers must submit the required information by September 4, 2012.⁸

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Issuers must provide HHS with administrative data necessary to identify the health plan, and data and descriptive information for each plan on the following items: all health benefits in the plan, treatment limitations, drug coverage, and enrollment.⁹ The final rule revises the definition of “treatment limitations” to include only quantitative limits (such as limits based on the frequency of treatment, days of coverage, or other similar limits on the scope and duration of treatment) and removes the requirement for issuers to provide data on nonquantitative limits (such as prior authorization and step therapy requirements).¹⁰

The data collected by HHS will be used to establish potential default benchmark plans in each state. HHS will then publish the state-specific benchmarks for notice and comment. These benchmark plans will set the standard for EHB. Small group and individual health coverage sold through a health insurance exchange must provide coverage for EHB.

Certifying Qualified Health Plans. The final rule also establishes the first phase of a two-phased approach for recognizing accrediting entities for purposes of certifying QHPs. PPACA provides that in order to be certified as a QHP and operate in a health insurance exchange, a health plan must be accredited by a recognized accrediting entity.¹¹ In phase one, the Secretary recognizes the National Committee for Quality Assurance (“NCQA”) and URAC¹² as accrediting entities on an interim basis.¹³ The recognition of NCQA and URAC as accrediting entities is effective until it is rescinded or replaced by the phase two process.¹⁴ In phase two, HHS will establish a criteria-based review process. The Secretary noted that phase two also will consider the role of states in the recognition process for accrediting entities.¹⁵

The process of defining essential health benefits and recognizing accrediting entities for certifying qualified health plans will continue to develop as HHS receives information from health insurance issuers and issues additional proposed regulations. We will continue to monitor the regulatory developments implementing these and other provisions of PPACA.

¹ Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, as amended by the Health Care and Education Reconciliation Act, Pub. L. No. 111-152, 124 Stat. 1029.

² 77 Fed. Reg. 42,658 (July 20, 2012).

³ A “grandfathered health plan” is any group health plan or individual coverage that was in effect on March 23, 2010, and that has not made any changes to the plan or coverage that would cause it to lose grandfathered status.

⁴ PPACA at §§ 1201, 1302.

⁵ *Id.* at § 1302(b).

⁶ *Id.* at § 1302(b)(4)(G) and (H).

⁷ 45 CFR § 156.120(c).

⁸ *Id.* § 156.120(e).

⁹ *Id.* § 156.120(b).

¹⁰ *Id.* § 156.120(a).

¹¹ PPACA at § 1311(c).

¹² Originally, URAC was incorporated under the name "Utilization Review Accreditation Commission." That name was shortened to just the acronym "URAC" in 1996, when URAC began accrediting other types of organizations such as health plans and preferred provider organizations.

¹³ 45 CFR § 156.275(c)(1).

¹⁴ 77 Fed. Reg. at 42,663.

About Us

The Law Offices of Jason M. Healy PLLC is a Washington, D.C. based law firm serving national and local clients. We focus primarily on legal issues affecting health care providers and welfare benefit plans. We help health care providers and their trade associations understand Medicare and Medicaid laws and regulations, and address compliance matters. We also represent health care providers in reimbursement audits, appeals, litigation, and transactions. We help sponsors of welfare benefit plans understand and comply with federal and state laws and prepare plan documents. Located in Washington, DC, just minutes from the Department of Health and Human Services, Congressional offices, and the White House, we are well positioned to provide legal support for advocacy efforts. Our Principal, Jason M. Healy, is a health care lawyer with over 14 years of experience with the array of legal issues facing health care providers.

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