



**The
ERISA
Industry
Committee**

February 29, 2012

Submitted to EssentialHealthBenefits@cms.hhs.gov
Center for Consumer Information and Insurance Oversight
Department of Health and Human Services

RE: Essential Health Benefits Bulletin

Ladies and Gentlemen:

The ERISA Industry Committee (“ERIC”) is pleased to submit these comments on the Essential Health Benefits Bulletin that describes the regulatory approach that the Department of Health and Human Services (the “Department”) intends to propose for defining essential health benefits under section 1302 of the Patient Protection and Affordable Care Act (“ACA”).

ERIC is a nonprofit association committed to the advancement of the employee retirement, health, and other welfare benefits of America’s largest employers. ERIC’s members are committed to, and known for, providing comprehensive, high quality, affordable health care. These members sponsor many of the largest private group health plans in the country, extending health care to tens of millions of workers and their families.

The definition of “essential health benefits” under the ACA serves two purposes. First, the ACA defines the essential health benefits that must be offered under non-grandfathered health plans sold in individual and small group markets within a state. Second, the ACA prohibits group health plans from imposing lifetime or annual dollar limits on essential health benefits.¹ The Bulletin addresses the definition of essential health benefits that must be offered by plans in the small group and individual markets within a state, but it does not address how essential health benefits will be defined for purposes of the annual and lifetime dollar limits.

The approach described in the Bulletin delegates to states the ability to define essential health benefits by selecting a benchmark plan (from among a number of permissible plans) to serve as a reference. Health insurance issuers will then have some flexibility to modify the benchmark’s services in defining the essential health benefits package offered under their plans.

A benchmark approach of the type described in the Bulletin cannot serve as a guide for employers to use in determining which benefits may be subject to dollar limits under their plans. It would be impractical, administratively burdensome, and unduly expensive for employers that offer group health plans to employees in multiple states to use state definitions of essential health benefits to identify benefits on which employers

¹ Section 1001(5) of the ACA (as amended by section 10101(a)) adds new section 2711 to the Public Health Service Act which is incorporated by reference into sections 715 of ERISA and 9815 of the Code.

cannot impose annual or lifetime dollar limits. Moreover, the benchmark approach does not offer the type of specificity necessary to identify which benefits may be subject to dollar limits, nor does it provide the certainty necessary for employers to operate their group health plans.

ERIC proposes that employers with group health plans be permitted to continue to apply a “good faith” interpretation of essential health benefits for purposes of implementing the prohibition on dollar limits on essential benefits. ERIC further proposes that the Department adopt a “safe harbor” approach under which employers that utilized specified criteria to determine whether a benefit should be considered an essential health benefit would be deemed to have applied a “good faith” interpretation.

Employers have traditionally administered their plans and controlled the cost of benefits provided under their plans by requiring treatments or services to meet certain criteria in order to be covered. These include limiting covered benefits to those that satisfy some or all of the following filters:

- medically necessary,
- neither experimental nor investigational,
- subject to reasonable medical management techniques,
- based on the best available guidance for evidence-based medicine and in keeping with currently available clinical guidelines,
- provided as an “in-network” benefit within the plan, and
- not in excess of the limits applied under the plan utilizing the standards of usual, customary, and reasonable fees.

ERIC proposes that the Department create a safe harbor incorporating these criteria so that an employer’s group health plan could apply dollar limits to any benefits that did not satisfy one or more of the above filters. Moreover, if a benefit were to satisfy each of these filters, it would be an essential health benefit only if the employer further determined that it fell within one of the ten categories enumerated in Section 1302 of ACA. (An employer’s large group health plan is not, of course, required to cover any benefit, regardless of whether it meets any of the above criteria.)

Allowing employers to use these filters to determine essential health benefits would give employers the flexibility that they need to identify essential health benefits provided under wide-ranging plan designs and also certainty as to which benefits provided under their plans cannot be subject to annual or lifetime dollar limits under the ACA.

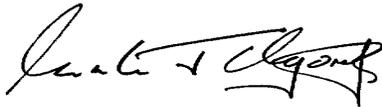
ERIC urges the Department to adopt its proposed methodology for determining essential health benefits for purposes of the ACA’s prohibition on annual and lifetime dollar limits. Such a methodology would preserve the ability of employers to control plan costs, could be easily implemented, and would provide employers with certainty regarding which benefits are essential health benefits.

Nothing in the ACA requires employers who sponsor large group health plans to cover essential health benefits. If the Department's proposal does not meet these requirements, employers may choose to eliminate some or all of the benefits that are covered under their plans, including essential health benefits.

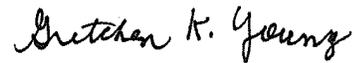
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ERIC appreciates the opportunity to provide comments on the Bulletin and looks forward to working with the Department to develop a methodology for determining essential health benefits which satisfies the intent of the ACA, complies with ERISA, and meets employers' needs. If the Department has any questions concerning our comments, or if we can be of further assistance, please let us know.

Sincerely,



Mark J. Ugoretz
President



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