



State Roles in Defining Essential Health Benefits (EHB)

SUMMARY

The Affordable Care Act (ACA) requires the establishment of an “essential health benefits (EHB)” package to define benefits covered in ACA-specified plans. The ACA requires EHB to be included in all “qualified health plans” and will apply to the ACA-established Medicaid expansion population, Basic Health Plans (ACA-created options for state-run programs for adults between 133%-200% of the federal poverty level (FPL)), enrollees in Medicaid benchmark and benchmark-equivalent plans, as well as nongrandfathered plans in the individual and small group markets sold both inside and outside exchanges.

On December 16, 2011, the Centers for Medicare and Medicaid Services (CMS) released an [Essential Health Benefits Bulletin](#), **announcing its intention to allow states to define their own EHB**. This was a significant and noted change from the expectation that the federal government would define 1 national EHB package.

Although federal regulations will further define state roles in establishing EHB packages, the December 16 [Essential Health Benefits Bulletin](#) as well as a February 17 [EHB Frequently Asked Questions \(FAQ\) Document](#) provide some guidance to states in this process.

This document provides detail on the EHB issue, and offers advocacy guidance to ensure an appropriate EHB package for children at the state level.

BACKGROUND

The ACA includes a very important set of provisions to establish an “essential health benefits (EHB) package.” The language of the ACA statute directs the Secretary of the US Department of Health and Human Services (HHS) to define and update the EHB package, which must include items and services within the following 10 benefit categories:

- 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
- Pediatric services, including oral and vision care

On December 16, 2011, the Center for Consumer Information and Insurance Oversight (CCIIO) at the Centers for Medicare and Medicaid Services (CMS) released an [Essential Health Benefits Bulletin](#), providing information and seeking comment on CMS’s intended plans for defining EHB. **In this bulletin, CMS announced its intention to turn the process of creating EHB over to the states.**

DECEMBER 16, 2011 CMS BULLETIN DETAILS: STATE DECISIONS

The December 16 CMS bulletin spells out preliminary details of how states will establish EHB packages. The bulletin maintains that EHB packages must provide items and services in the aforementioned 10 categories, as spelled out in ACA statute.

CMS indicates that EHB will be defined by a benchmark plan selected by each state for 2014 and 2015. **States may choose from any of the 4 following benchmarks:**

- 1) The largest plan by enrollment in any of the 3 largest small group insurance products in the state's small group market
- 2) Any of the 3 largest state employee health benefit plans by enrollment
- 3) Any of the 3 largest national Federal Employee Health Benefit Plan (FEHBP) plan options by enrollment; or
- 4) The largest insured commercial non-Medicaid Health Maintenance Organization (HMO) operating in the state

States are permitted to select a **single benchmark** to serve as the standard for qualified health plans offered both inside the exchange and in the individual and small group markets. HHS further indicates it will assess the benchmark process beginning in 2016 and beyond, based on feedback and evaluation.

In the December 16 bulletin, CMS notes that certain of the 10 categories of services can be found lacking in "typical employer plans." These include:

- Mental health and substance use disorder services
- Pediatric oral and vision care
- Habilitative services

The bulletin spells out how states must assure that *any* of the 10 categories of services not included in the benchmark package must be added to the benchmark EHB package, through a supplementation of benefits from other benchmark plan options. AAP has made specific recommendations for mental health and substance use disorder services, pediatric oral and vision care and habilitative services in the following pages.

CMS further states that it is considering flexibility for *substitution of benefits* both within and across benefit categories. CMS also reminds states of the ACA requirement that all state insurance benefit mandates in excess of the EHB must be paid for by states.

Importantly for children, the February 17 EHB FAQ document clarifies that preventive services required by the ACA (including [AAP/Bright Futures Recommendations for Pediatric Preventive Care](#), ACIP-recommended immunization services, and United States Preventive Services Task Force items and services recommendations with a rating of 'A' or 'B') must be included in the EHB.

STATE ADVOCACY

State AAP chapters remain actively engaged at the state level on EHB decision making, working to ensure that children receive medically necessary services and that EHB packages are robust and will meet the needs of children and pediatrics. Those interested in AAP chapter activity on this or other issues, or partnering with chapters, are encouraged to contact your [state AAP chapter](#).

AAP GUIDANCE

The American Academy of Pediatrics (AAP) offers guidance on specific facets essential health benefits (EHB) as determined by states.

POLICY OBJECTIVE	AAP GUIDANCE
<p>Ensure a robust benefit package for children.</p>	<p>The AAP recommends the following with respect to state EHB packages:</p> <ul style="list-style-type: none"> • The use of Medicaid’s Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) benefit as the benefit benchmark for children in EHB packages. • Inclusion of all services outlined in the AAP Policy Statement, Scope of Health Care Benefits from Birth Through Age 26. • Inclusion of the entire schedule of visits outlined in the AAP/Bright Futures periodicity schedule, as is required by the ACA. The AAP/<i>Bright Futures</i> recommended periodicity schedule is the basis for the <i>Bright Futures</i> preventive care program. <p>Medicaid’s EPSDT guarantee ensures that all services children need are covered, and the AAP policy statement <i>Scope of Health Care Benefits from Birth Through Age 26</i> provides a concrete blueprint for benefits packages for children.</p> <p>EPSDT should be the EHB gold standard sought by advocates for children. However, it is possible that lawmakers will not consider this option for insurance plans in the private market. As such, advocates may need to investigate other benefit packages – such as that of the state’s Children’s Health Insurance Program (CHIP), if appropriate – that may be suitable for children. Above all, child advocates are encouraged to review all EHB benchmark options, and absent an EPSDT standard, seek the most robust benefit package for children possible, including all the benefits outlined in the AAP Policy Statement, Scope of Health Care Benefits from Birth Through Age 26.</p> <p>Advocates will want to remind state decision makers that children with special health care needs have different clinical challenges and will require different benefits than adults in the average small group plan.</p> <p>Finally, it is imperative that states not choose a grandfathered plan as an EHB benchmark. While the December 16 CMS bulletin indicates EHB packages must include <i>Bright Futures</i> and other ACA-required preventive services, grandfathered plans do not have to follow other ACA consumer protections.</p>
<p>Ensure an appropriate definition of “medical necessity” for children.</p>	<p>State Medicaid programs generally provide a comprehensive definition of medical necessity for children. Advocates are encouraged to ensure that:</p> <ul style="list-style-type: none"> • A robust definition of medical necessity, based on children’s developmental needs and informed by the AAP’s Essential Contractual Language for Medical Necessity in Children, is applied to state EHB packages, to ensure children receive all medically necessary services.
<p>Ensure that states choose a benchmark package that includes existing state benefit mandates for children in the EHB package.</p>	<p>States are required to pay for state insurance mandates in excess of the EHB package. Therefore, advocates are encouraged to ensure:</p> <ul style="list-style-type: none"> • That states choose a benchmark package that contains all state mandates for children, as states will not then have to pay for them separately.
<p>Guarantee that benefits supplemented by other plans meet the needs of children.</p>	<p>If a benchmark plan does not cover 1 of the 10 required categories of services, the plan must be supplemented by the largest plan in the benchmark type by enrollment (eg, small group plans or state employee plans or FEHBP) that offers the benefit. Advocates are encouraged to seek:</p> <ul style="list-style-type: none"> • Medicaid’s EPSDT benefit as the supplemental coverage for benefits not explicitly included in the EHB package. Doing so will ensure that all services children are found to need are provided.

	<ul style="list-style-type: none"> Should states not utilize EPSDT, advocates are encouraged to monitor state plans for supplementation of existing benefits not provided in the EHB package, to ensure that all services children are found to need are included.
<i>Ensure that substitution of benefits within categories is limited and that benefits are appropriate for children.</i>	<p>Advocates should work to:</p> <ul style="list-style-type: none"> Prevent substitution of benefits within benchmark categories. Should states choose EPSDT as the benefit standard for children, all services children are found to need will be included. Should states choose to allow substitution of benefits within categories, advocates should seek the strongest, most robust set of benefits possible.
<i>Stop plans from substituting benefits across categories.</i>	<p>Advocates should work to:</p> <ul style="list-style-type: none"> Prevent substitution of benefits across benchmark categories. EHB categories are different and the addition of more or additional benefits in 1 category does not compensate for a lack of benefits in another category. Choosing EPSDT as the benchmark standard benefit for children will ensure that all services children need are covered.
<i>Make specific recommendations on habilitative care.</i>	<p>The Notice of Benefit and Payment Parameters (NBPP) for 2016 Final Rule established a uniform definition of habilitative services that was used starting with the 2016 plan year:</p> <p><i>Health care services and devices that help a person keep, learn, or improve skills and functioning for daily living (habilitative services). Examples include therapy for a child who is not walking or talking at the expected age. These services may include physical and occupational therapy, speech-language pathology, and other services for people with disabilities in a variety of inpatient and/or outpatient settings.</i></p> <p>States are allowed to define the benefits covered for habilitative services but are required by the NBPP 2017 Final Rule to not offer benefits or impose limits on habilitative services that are less favorable than those of rehabilitative services and devices.</p> <p>Advocates should work to ensure:</p> <ul style="list-style-type: none"> State decisions around habilitation should include pediatricians and families of children with special health care needs, and not limit benefits or services except on the best available evidence.
<i>Make specific recommendations on oral health services.</i>	<p>The December 16 CMS bulletin indicates that states can supplement pediatric oral services with either (1) the Federal Employees Dental and Vision Insurance Program (FEDVIP) dental plan with the largest national enrollment; or (2) the state's separate CHIP program. Advocates are encouraged to:</p> <ul style="list-style-type: none"> Ensure the state benchmark package for children is the most robust option for pediatric oral health services. <p>The 2019 NBPP Final Rule eliminated high (85%) and low (70%) actuarial value designations for stand alone dental plans that may be sold to complete EHB for children. With this elimination, plans will be allowed to offer considerably less coverage and consumers will have a more difficult time comparing dental plans. Advocates are encouraged to:</p> <ul style="list-style-type: none"> Ensure this change does not erode dental benefits for children.
<i>Make specific recommendations on pediatric vision services.</i>	<p>The December 16 CMS bulletin indicates that states can supplement pediatric vision services with the FEDVIP vision plan with the largest enrollment. Advocates are encouraged to:</p> <ul style="list-style-type: none"> Ensure the state benchmark package for children is the most robust option for pediatric vision services.
<i>Ensure that pediatric drug coverage is appropriate for children.</i>	<p>The December 16 bulletin indicates that the EHB pharmacy benefit may reflect flexibility found in Medicare Part D coverage, where plans must cover categories and classes set forth in the benchmark, but then may choose specific drugs within those categories/classes to cover. Advocates are encouraged to:</p>

	<ul style="list-style-type: none"> • Ensure that drugs and biologics for use by children – especially children with special health care needs - are covered without tiering or other limitations.
<i>Prohibit coverage of “spiritual care” benefits.</i>	<p>Advocates of “spiritual care” have sought to include this benefit in insurance plans sold through exchanges, and are likely to seek similar coverage in state EHB benchmark packages. Spiritual care benefits are sought by those of various religious groups that seek to provide prayer benefits in place of evidence-based medical care. The Academy remains opposed to spiritual care replacing medical care for children, and is guided by the AAP policy statement, Religious Objections to Medical Care. Advocates are encouraged to:</p> <ul style="list-style-type: none"> • Ensure EHB plans do not provide coverage for spiritual care services.
<i>Prevent scope and duration benefit limitations.</i>	<p>The February 17, 2012 CMS FAQ document indicates that while plans must continue to follow the ACA’s requirements on annual and lifetime dollar limits, plans may impose non-dollar limits that are actuarially equivalent to dollar limits. This effectively means that states and/or plans may create such scope and duration limitations that limit the services provided to children. Advocates are encouraged to:</p> <ul style="list-style-type: none"> • Promote EPSDT as the benchmark standard of care for children, which would ensure that all needed services are provided. • Should a state not choose EPSDT as the benchmark, advocates are encouraged to work with states to restrict scope and duration benefit limitations, which will directly impact the care children receive.
<i>Ensure that the state will have a strong monitoring mechanism in place to guarantee that plans provide appropriate benefits.</i>	<p>Advocates are encouraged to work with states to:</p> <ul style="list-style-type: none"> • Establish clear monitoring and enforcement mechanisms for EHB services, to ensure that children receive all services spelled out in the EHB. Moreover advocates are encouraged to become familiar with internal and external appeals processes, as required by the ACA. • Help states compile instances of denied services for children, which will inform the process of reevaluation of EHB in the future.

State AAP chapters are actively engaged in the EHB determination process at the state level and can serve as a resource on this issue to other advocates for children. Contact your [state AAP chapter](#) to learn more.

For more information or individual consultation on this or other ACA state implementation issues, contact the AAP Division of State Government Affairs at 800/433-9016, x 7799 or stgov@aap.org.