

Mandated Health Benefits Report

2020 Plan Year

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Summary

Washington state will not need to defray costs incurred due to state benefit requirements for the 2020 plan year.

Background and methodology

When a state legislature enacts a benefit mandate that exceeds a state's selected set of Essential Health Benefits (EHB) and is not adopting the benefit mandate for purposes of compliance with federal regulations, the state must defray the cost of Qualified Health Plans (QHPs) covering the benefit, per 42 USC 18116, sec 1311(d) (3) (B); 45 CFR 155.170. Each state must identify any state benefit requirements adopted after December 31, 2011, that exceed the Essential Health Benefits package in the state to comply with this requirement. Washington's Legislature assigned the responsibility for annually identifying state-mandated health benefits to Insurance Commissioner (RCW 48.43.715).

The specific charge for this report:

RCW 48.43.715 (4) Beginning December 15, 2012, and every year thereafter, the commissioner shall submit to the legislature a list of state-mandated health benefits, the enforcement of which will result in federally imposed costs to the state related to the plans sold through the exchange because the benefits are not included in the essential health benefits designated under federal law. The list must include the anticipated costs to the state of each state-mandated health benefit on the list and any statutory changes needed if funds are not appropriated to defray the state costs for the listed mandate. The commissioner may enforce a mandate on the list for the entire market only if funds are appropriated in an omnibus appropriations act specifically to pay the state portion of the identified costs.

RCW 48.47.010 (7) defines a mandated health benefit as "coverage or offering required by law to be provided by a health carrier to: (a) Cover a specific health care service or services; (b) cover treatment of a specific condition or conditions; or (c) contract, pay or reimburse specific categories of health care providers for specific services;..." This definition is broader than the federal definition for purposes of the mandated analysis of state benefit requirements. See "Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation, Final Rule" 78 FR 12834, at 12838 (Feb. 25, 2013); HHS Notice of Benefit and Payment Parameters for 2019; Final Rule, 83 FR 16930 (April 17, 2018).

For purposes of this report, we analyzed 2019 legislation to determine whether a new health benefit mandate was established based on either requirements to cover a specific health care service or services or treatment of a specific condition. If we identified such requirements, we then determined whether the benefit was included in an EHB category. This report assesses whether those laws established a new benefit mandate for which the state must defray costs.

OIC Review of 2019 Legislation

SB 5602 – Eliminating Barriers to Reproductive Health Care for All (c 399, 2019 laws)

This law clarifies how an issuer must interpret eligibility for coverage for reproductive health care services for covered individuals without discrimination based on the person's gender expression or gender identity (sec. 2 and sec. 3 (7)). This requirement is not a new benefit mandate, as it clarifies the nondiscrimination protections applicable to EHB under current state law and the Affordable Care Act.

Section 3 of the law is effective for plans offered starting January 1, 2021, and therefore, even if presenting a new mandate, the requirement to defray costs for QHPs would not apply in 2020.

Section 3 of the law modifies the requirements in RCW 48.43.072 (2018 c119 s 2), clarifying that condoms are included in the definition of contraceptive drugs, devices and other products that must be covered. (ESHB 5602, sec. 3 (1) (a)). The base benchmark plan for the EHB in Washington covers contraceptive services and supplies, including but not limited to vasectomy, tubal ligation and insertion or extraction of FDA-approved contractive devices. WAC 284-43-5642 (1) (a). This requirement is a clarification of what is included in the category and is not a new mandated benefit.

The law adds greater specificity about the preventive services that must be covered, including screening for health care needs arising from a sexual assault and well-person preventive visits (ESHB 5602, sec. 3 (1) (d)). Washington's EHB includes the category of preventive services, which this section clarifies WAC 284-43-5642 (9). This requirement prohibits denying preventive service screening because it arises out of sexual assault and does not create a new specific type of screening not already required by the EHB. A carrier must cover well-person preventive visits either under the EHB category of ambulatory services or as preventive services, and such visits are not a new EHB benefit. WAC 284-43-5642 (1) and (9) (vi).

The law requires coverage of over-the-counter prenatal vitamins and breast pumps for covered persons expecting the birth or adoption of a child (ESHB 5602, sec. 3 (1) (f)). Prenatal vitamins are covered by the base benchmark plan when FDA approved; the requirement in ESHB 5602 adds clarity to the scope of the already EHB-included product and is not a new benefit. HRSA guidelines, which WAC 284-43-5642 (9) includes in its EHB definition of services, include breastfeeding support, supplies and counseling. This change in the law clarifies how to apply that requirement, which specifically includes the cost of breastfeeding equipment.

ESHB 1879 – Prescription drug utilization management (c 171, laws of 2019)

With passage of ESHB 1879, the Legislature requires carriers to follow specific timelines and use certain criteria in evaluating an enrollee's request for drug substitution or other waiver of drug utilization management requirements. This is not a benefit mandate but rather legislation addressing enrollees receiving timely and appropriate access to services. The law establishes operational standards for the

exception processes carriers use to determine whether an EHB prescription drug is covered. These processes are considered access standards and not benefit mandates under the Affordable Care Act. See, 45 CFR 156.122. Text

Conclusion

Since the laws enacted by Washington's legislature in 2019 did not establish new benefit mandates, the Commissioner concludes there is no obligation for the state to defray costs for QHPs associated with those laws.