



Date: October 27, 2017

Title: Draft Example of an Acceptable Methodology for Comparing Benefits of a State's EHB-benchmark Plan Selection to Benefits of a Typical Employer Plan As Proposed under the HHS Notice of Benefit and Payment Parameters for 2019 (CMS-9930-P)

Background

Under the proposals at 45 CFR §156.111 in the HHS Notice of Benefit and Payment Parameters for 2019 Proposed Rule (2019 Proposed Payment Notice) displayed on October 27, 2017,¹ we propose that States may select a new essential health benefits (EHB) benchmark plan for plan years beginning on or after January 1, 2019. If a State opts to select a new EHB-benchmark plan utilizing the proposed selection options described in §156.111(a)(2) or (3) of the 2019 Proposed Payment Notice, the State would be required to submit an actuarial certification and associated report from an actuary, who is a member of the American Academy of Actuaries, in accordance with generally accepted actuarial principles and methodologies, that affirms that the State's EHB-benchmark plan is equal in scope to benefits provided under a typical employer plan, pursuant to proposed §156.111(e)(2).

Additionally, if the State selects a new EHB-benchmark plan using the proposed selection option at §156.111(a)(3), the actuarial certification and report submitted by the State would also be required to affirm that the new EHB-benchmark plan does not exceed the generosity of the most generous among a set of comparison plans. These plans include the State's EHB-benchmark plan used for the 2017 plan year, and any of the State's base-benchmark plan options used for the 2017 plan year described in §156.100(a)(1), supplemented as necessary under §156.110.

These proposed requirements comply with section 1302(b)(2) of the Patient Protection and Affordable Care Act (PPACA), which requires the Secretary to ensure that the scope of EHB is equal to the scope of benefits provided under a typical employer plan, as determined by the Secretary.

This draft methodology below outlines a proposed example of one approach for actuaries to follow when comparing benefits in order to complete the required actuarial certification and associated actuarial report under proposed §156.111(e)(2)(i) for typicality. A similar approach could be taken for comparing benefits for generosity in order to complete the required actuarial certification and associated actuarial report under proposed §156.111(e)(2)(ii).

Methodology for Comparing Benefits

¹ A copy of the proposed rule is available on the Center for Consumer Information and Insurance Oversight website at: <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/index.html>.

The actuarial certification and associated actuarial report required by proposed §156.111(e)(2) would be required to comply with generally accepted actuarial principles and methodologies. This would include complying with all applicable Actuarial Standards of Practice (ASOP) (including but not limited to ASOP 41 on Actuarial Communications).² For example, ASOP 41 on Actuarial Communications includes disclosure requirements, including those that apply to the disclosure of information on the methods and assumptions being used for the actuarial certification and report. ASOP 8 on Regulatory Filings for Health Benefits, Accident and Health Insurance, and Entities Providing Health Benefits³ and ASOP 50 on Determining Minimum Value and Actuarial Value under the Affordable Care Act⁴ could also provide additional guidance. The actuarial certification for this proposed requirement is in a template incorporated in the Paperwork Reduction Act (PRA) notice on the EHB benchmark plans (OMB Control Number: 0938-1174)⁵ and includes an attestation that the standard actuarial practices have been followed or that exceptions have been noted. The signing actuary would be required to be a Member of the American Academy of Actuaries.

An example of an acceptable methodology for comparing the benefits of a State's EHB-benchmark plan to the benefits of a typical employer plan is as follows:

1. **Select the "Typical Employer Plan."** The 2019 Proposed Payment Notice proposes to define a "Typical Employer Plan" as an employer plan within a product (as these terms are defined in 45 CFR 144.103) with substantial enrollment in the product of at least 5,000 enrollees sold in the small group or large group market, in one or more States; or a self-insured group health plan with substantial enrollment of at least 5,000 enrollees in one or more States.
2. **Calculate the expected value of covering all of the benefits at 100 percent value in the "Typical Employer Plan."** The State must use reasonable actuarial assumptions. For example, the State may use a weighted average of index rates from all of the issuers in the State from the small group market products under §156.80(d)(1)(i) using enrollment from the previous year.
3. **Compare the expected value of covering all of the benefits (at 100 percent value) in the "Typical Employer Plan" to the State's proposed EHB-benchmark plan.** The comparison should demonstrate that each applicable category of benefits in the "Typical Employer Plan" is equal to those same categories in the State's EHB-benchmark plan. To satisfy this test, the State's actuary can demonstrate that each EHB category contained in the "Typical Employer Plan" has an expected value of at least 98 percent of the State's EHB-benchmark plan using appropriate actuarial assumptions and methods.

² http://www.actuarialstandardsboard.org/wp-content/uploads/2014/02/asop041_120.pdf.

³ http://www.actuarialstandardsboard.org/wp-content/uploads/2014/08/asop008_176.pdf.

⁴ http://www.actuarialstandardsboard.org/wp-content/uploads/2015/10/asop050_182.pdf.

⁵ The PRA documents include the required template for this actuarial certification. Documents associated with the PRA are posted on the Centers for Medicare & Medicaid Services' PRA website at:

<https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.

Comments on these documents should be submitted to www.regulations.gov.

Under the 2019 Proposed Payment Notice, the State would be required to submit the actuarial certification and report from an actuary, who is a member of the American Academy of Actuaries, in accordance with generally accepted actuarial principles and methodologies to CMS for review as part of the State's EHB-benchmark plan submission for any benefit year for which the State is proposing to make changes to its EHB-benchmark plan under options proposed at §156.111(a)(2) or (3).

Comments

We seek comment on this draft example methodology for actuaries to use when comparing benefits for the purposes of determining whether a State's selected EHB-benchmark plan is equal in scope to the benefits provided under a typical employer plan under the proposed options at §156.111(a)(2) and (3) of the 2019 Proposed Payment Notice. We are particularly interested in comments from the actuarial community on the approach described in this draft example and any additional clarifications that are needed under this draft example methodology to assist actuaries in completing the actuarial certification and associated actuarial report requirements as proposed in the 2019 Proposed Payment Notice and described in the PRA documents. Comments on this draft example methodology should be submitted via the *Federal Register* in response to the 2019 Proposed Payment Notice by November 27, 2017.⁶

⁶ The 2019 Proposed Payment Notice Proposed Rule docket will be available at www.regulations.gov.