

# Health Law and Policy Update:

## September 7, 2012

### This week's updates

- [Colorado recommends Essential Health Benefit benchmark plan](#)
- [Limits on health care created for DREAM Act youth](#)
- [HHS declares that health plans cannot discriminate against transgender people](#)

### What's New

#### **Colorado recommends Essential Health Benefit benchmark plan**

The Colorado Division of Insurance, the Governor's Office and the Colorado Health Benefit Exchange (COHBE) recently released in conjunction their recommendation for Colorado's Essential Health Benefit (EHB) package. Starting in 2014, the EHB package will serve as the minimum set of benefits that insurance companies must cover for all health plans, both in out of the health insurance exchange. As we wrote in previous updates, the U.S. Department of Health and Human Services issued a [bulletin](#) in December 2011 that proposes a process for states to establish an EHB package. The HHS bulletin suggests that instead of a single standard for defining the EHB, the department will allow states to benchmark to a "reference plan" based on a currently available health plan in the state, modified as needed to meet the EHB requirements found in the Patient Protection and Affordable Care Act (PPACA). The HHS bulletin specifies that states will have the flexibility to choose one of the following benchmark plans as the basis for their EHB:

- One of the three largest small group products in the state
- One of the three largest state employee health plans
- One of the three largest federal employee health plans
- The largest HMO plan in the state

The HHS bulletin indicates that once a benchmark plan is selected, the EHB package must still comply with the ACA's requirement that the EHB cover 10 mandatory categories of services. Those categories include:

- Ambulatory patient services
- Emergency services
- Hospitalization
- Laboratory services

- Maternity and newborn care
- Mental health and substance use disorder services, including behavioral health treatment
- Pediatric services, including oral and vision care
- Prescription drugs
- Preventive and wellness services and chronic disease management
- Rehabilitative and habilitative services and devices

The joint recommendation for Colorado is to use the largest small group product in the state, which is the Kaiser Ded/CO HMO1200D plan. According to the draft recommendation, this plan includes all state mandated benefits and, being the largest small group plan by enrollment, satisfies the federal requirement that the EHB package reflect the benefits in a "typical employer plan." A chart is available on the Colorado Division of Insurance [website](#) that compares the recommended plan with the other benchmark options.

Two of the ten required categories of services were not covered by most of Colorado's benchmark plan options, including the recommended benchmark option. These categories are habilitative services and pediatric oral and vision services. Future federal guidance is expected to help clarify what these categories must cover. For additional information on the pediatric dental benefit, refer to a recent [issue brief](#) from the Georgetown University Center for Children and Families.

The Colorado Division of Insurance is accepting comments on the draft recommendation. Comments on this draft should be sent to the via email to [ehb@dora.state.co.us](mailto:ehb@dora.state.co.us) by the close of business on **September 10, 2012**.

### **Limits on health care created for DREAM Act youth**

On August 28, the U.S. Department of Health and Human Services (HHS) issued a [letter](#) to state health officials announcing restrictions on accessing health care for youth who are determined eligible for deferred action under the recently-created Deferred Action for Childhood Arrivals (DACA) program, and regulations amending the definition of lawfully present for the Pre-existing Condition Insurance Plans (PCIPs) to exclude individuals granted deferred action under DACA. [DACA](#) is the program that allows certain DREAM Act eligible youth to be granted deferred action, or temporary permission to remain in the U.S. Deferred action allows individuals to obtain a work permit but does not provide a path to lawful, permanent resident status or citizenship. Under the recent HHS guidance, individuals granted deferred action under DACA will also not be eligible for certain health care affordability programs,

effective immediately (August 30, 2012). The HHS announcement means that these youth will, for purposes of assistance with health care, be treated as undocumented even though deferred action status makes them lawfully present. Prior to the announcement, individuals granted deferred action under DACA would have been treated the same as other individuals with deferred action status and therefore would be eligible for the Pre-existing Condition Insurance Plans (GettingUsCovered in Colorado), Medicaid and CHIP in some states (not Colorado), and the health insurance Exchanges that will be implemented January 1, 2014. This is no longer the case.

**HHS declares that health plans cannot discriminate against transgender people**

The Kaiser Family Foundation [reported](#) this week that the Department of Health and Human Services Office of Civil Rights clarified in [a letter](#) that anti-discrimination provisions of the Patient Protection and Affordable Care Act (PPACA) apply to transgender individuals. Specifically, the letter states that employers, health insurers, and others may not deny health insurance coverage or benefits to individuals on the basis of "gender identity or failure to conform to stereotypical notions of masculinity or femininity." Individuals that believe they are discriminated against on the basis of sex, including gender identity, may submit formal complaints to the HHS [Office of Civil Rights](#). The office has been given the right to rescind federal financial assistance if an organization's actions are ruled discriminatory.