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## Commentary: States Should Maintain Strong Essential Health Benefit Standards, Risk Adjustment Program

By Sarah Lueck

Recent federal rule changes hand two new troubling health care options to states: the ability to scale back essential health benefit (EHB) standards and to weaken the risk adjustment program that's designed to compensate insurers with sicker-than-average customers. The changes take effect in 2020, but states must inform the federal government this summer if they want to take up the new options: July 2 is the deadline for EHB and August 1 for risk adjustment changes. To protect consumers, especially those with pre-existing conditions and other serious health needs, states should reject these options and instead maintain comprehensive EHB standards and a predictable risk adjustment program.

Let's take these one at a time.

First, the Affordable Care Act (ACA) requires plans in the individual and small-group markets to cover EHBs, which are ten general categories of services<sup>1</sup> such as hospitalizations and prescription drugs. But, under the new rule, if a state allows it and notifies the federal government, insurers could substitute benefits across EHB categories, instead of only within a given category as under current rules. That might let an insurer, for example, scale back coverage of hospital care or rehabilitative services and increase coverage of outpatient physician visits. That could leave sicker people whose conditions will likelier require costly hospital care with higher out-of-pocket costs.

Each state also has an "EHB benchmark" that determines in greater detail the services that plans in the relevant markets must cover. The rule also gives states new options to weaken their EHB benchmarks:

- States can use their same EHB benchmark as in 2017 but replace one or more benefit categories with those of other states' EHB benchmarks. Under that option, a state could create a new EHB standard by choosing the least comprehensive state benchmark for each benefit category.
- States can adopt the EHB benchmark that any other state used in 2017.

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<sup>1</sup> Center on Budget and Policy Priorities, "Essential Health Benefits Under Threat," <https://www.cbpp.org/essential-health-benefits-under-threat>.

- Or, states can create a new EHB benchmark from scratch, as long as it meets certain standards, including by providing a scope of benefits equal (based on an actuarial calculation) to that of certain plans that the rule specifies.

Any state that modifies its EHB benchmark would have to ensure that it covers all ten EHB categories. But, with these new options, states could scale back coverage within the broad categories. In addition to the direct effects on the individual and small-group markets, that could adversely affect health benefits for people in large employer plans because key ACA cost protections are linked to the EHB definition: for example, the ACA's bans on annual and lifetime limits on coverage only apply to services categorized as EHB.

Weakening EHB — whether by giving insurers more latitude to scale back or drop coverage of key services or by narrowing a state's EHB benchmark — will likely most affect people with pre-existing conditions or serious health needs. Those populations are likelier to need the items and services that insurers and states would target for coverage reductions.

Weakening risk adjustment could also harm these groups. The ACA's risk adjustment program transfers revenues from insurers that enroll a healthier-than-average group of consumers to those that enroll a sicker-than-average group, compensating the latter for the extra health care costs they incur. By doing so, risk adjustment reduces the incentives for insurers to design plans to avoid attracting people with serious health needs — for example, by excluding coverage for certain drugs, charging high co-pays for certain services, or limiting provider networks.

Beginning in 2020, the new rules would let states shrink risk adjustment transfers among individual or small-group market insurers by up to 50 percent, provided they get federal approval. States in which an influential insurer anticipates enrolling healthier consumers and paying into the risk adjustment program may face pressure from such an insurer to take advantage of the new option. But if states do so, insurers may no longer be able to count on risk adjustment to compensate them for the extra costs of enrolling people with pre-existing conditions and other serious health needs. Consequently, insurers will likely redesign their plans so that their coverage is less attractive for these consumers.

Both the EHB and risk adjustment changes could drive insurers to reduce benefits and engage in more risk selection tactics to avoid high-cost populations. The two policies could also reinforce each other's negative effects. The more a state weakens EHB standards, the more insurers can redesign plans to avoid attracting sicker consumers. And the more a state weakens risk adjustment, the greater the incentive for insurers to do so.

Some states have taken or are considering taking action to protect their insurance markets and consumers from harmful federal rule changes.<sup>2</sup> But when it comes to EHBs and risk adjustment, *all* states can protect themselves and their consumers by simply not implementing the new federal options. Instead, they should retain current EHB standards and risk adjustment programs that help level the playing field for insurers participating in ACA markets and protect the consumers who depend on these markets for coverage.

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<sup>2</sup> Shelby Gonzales, "Action Needed to Keep Marketplace Enrollment Strong," Center on Budget and Policy Priorities, May 1, 2018, <https://www.cbpp.org/blog/action-needed-to-keep-marketplace-enrollment-strong>.