

DEPARTMENT OF MANAGED HEALTH CARE
ADOPTION OF EMERGENCY REGULATIONS

California Code of Regulations
Title 28, Article 7, Section 1300.67.005

Essential Health Benefits

(Control No. 2016-5191)

AUTHORITY

Under the authority established in the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act),¹ specifically Health and Safety Code Sections 1341, 1344, and 1367.005, the Director of the Department of Managed Health Care (Department) proposes to amend as an emergency regulation section 1300.67.005, “Essential Health Benefits,” located in Title 28 of the California Code of Regulations (CCR).

REFERENCE

This regulation is intended to implement, interpret, and/or make specific Health and Safety Code Section 1367.005.

FINDING OF EMERGENCY

The Director of the Department has determined that an emergency exists. Health and Safety Code section 1367.005(o)(3) states that the initial adoption of emergency regulations implementing this section made during the 2015-16 Regular Session of the Legislature and the readoption of emergency regulations authorized by this subdivision shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. The 2015-16 Regular Session of the Legislature ends on November 30, 2016.

These emergency regulations implement provisions of the federal Patient Protection and Affordable Care Act (ACA) (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), any rules, regulations, or guidance issued thereunder, and they amend the existing Title 28 Essential Health Benefit (EHB) regulations in accordance with statutory changes enacted through Senate Bill (SB) 43 (Hernandez, 2015).

¹ California Health and Safety Code Sections 1340 et seq. References herein to “Section” are to sections of the Knox-Keene Act unless otherwise specified.

INFORMATIVE DIGEST

Under existing law, the Knox-Keene Act provides for the licensure and regulation of health care service plans by the Department and makes a willful violation of the Knox-Keene Act a crime. The Department, as regulator of individual and small group health plans, is responsible for reviewing health plan filings to ensure its licensees meet EHB coverage requirements. Additionally, the Department is responsible for certifying licensed health plans seeking to be Qualified Health Plans (QHP)² on the California Health Benefits Exchange (Exchange).

The ACA requires nongrandfathered individual and small group health insurance issuers and health plans to provide the EHB outlined in ACA section 1302(b) (42 U.S.C. § 18022). In December of 2011, the federal Department of Health and Human Services (HHS) issued guidance authorizing each state to select a benchmark plan from specified options offered in the first quarter of 2012. The benchmark plan defines the specific benefits required to be covered within each of the broad, federally-defined EHB categories of benefits. In September 2012, under Assembly Bill (AB) 1453 and its companion legislation, SB 951, California selected the Kaiser Small Group HMO 30 plan (Kaiser Small Group plan) as the base-benchmark plan. California also supplemented the base-benchmark plan to achieve coverage of the pediatric oral and vision care EHB. The Kaiser Small Group benchmark plan, as supplemented, defines EHB within California.

In 2015, federal regulators directed states to select a new benchmark plan from among defined options. Through SB 43, California again chose the Kaiser Small Group HMO 30, as that plan was offered during the first quarter of 2014. SB 43 similarly updated the pediatric oral and vision EHB; for the pediatric vision EHB, the bill retained the FEDVIP vision benefit, as of 2014. For the pediatric oral EHB, the bill updated the reference from 2011-12 Healthy Families (CHIP) dental benefits to the dental benefit received by children under the Medi-Cal program as of 2014.

These proposed regulations are intended to provide the necessary guidance for health plans to comply with both state and federal EHB requirements.

SPECIFIC PURPOSE OF THE REGULATION

Section 1300.67.005(b) is amended to update the deadline for filing the EHB Filing Worksheet. This implements existing law by establishing an appropriate deadline for the compliance filings.

² “The term ‘qualified health plan’ means a health plan that-- (A) has in effect a certification (which may include a seal or other indication of approval) that such plan meets the criteria for certification described in section 18031(c) of this title issued or recognized by each Exchange through which such plan is offered; (B) provides the essential health benefits package described in section 18022(a) of this title; and (C) is offered by a health insurance issuer that-- (i) is licensed and in good standing to offer health insurance coverage in each State in which such issuer offers health insurance coverage under this title; (ii) agrees to offer at least one qualified health plan in the silver level and at least one plan in the gold level in each such Exchange; (iii) agrees to charge the same premium rate for each qualified health plan of the issuer without regard to whether the plan is offered through an Exchange or whether the plan is offered directly from the issuer or through an agent; and (iv) complies with the regulations developed by the Secretary under section 18031(d) of this title and such other requirements as an applicable Exchange may establish.” 42 U.S.C. § 18021.

Section 1300.67.005(c)(2) is amended to update the reference to California’s base-benchmark plan. This change implements existing law.

Section 1300.67.005(c)(3) is amended to clarify the date on which an enrollee ages out of “pediatric” oral and vision benefits, consistent with related federal law.

Section 1300.67.005(d)(4)(B) is amended to strike the per se age limit on aphakia contact lenses, consistent with federal law and guidance regarding impermissible discrimination. It has also been amended to relocate a comma.

Section 1300.67.005(d)(10)(C)(ix) is amended to strike the description of “physical, occupational, and speech therapy” benefits from the regulation’s subdivision regarding Skilled Nursing Facility care, and to move this benefit to the newly proposed subdivision regarding Habilitative and Rehabilitative services. This clarifying change reflects the structure of the new base-benchmark plan.

Section 1300.67.005(d)(12) is added to implement the updated definition of the habilitative and rehabilitative services EHB, and to describe the required coverage required according to the new base benchmark plan and SB 43’s provisions related to habilitative services.

Section 1300.67.005(d)(13) is added to clarify the existing requirement for coverage in connection with a clinical trial, and to reflect the description of that coverage in the new base benchmark plan.

Section 1300.67.005(g), containing the EHB Filing Worksheet, is amended to align with the amendments in the rest of the regulation. For greater clarity, subdivision (g) has a nonsubstantive amendment for consistent formatting.

Section 1300.67.005(g), section #10, is amended to reference the updated pediatric oral and vision care EHB, which supplement the base benchmark plan. This amendment implements existing law. This subdivision clarifies that the pediatric vision EHB includes but is not limited to low-vision benefits. This subdivision also clarifies that, with regard to the pediatric oral EHB, the required coverage includes the Medi-Cal “Early Periodic Screening, Diagnosis, and Treatment” (EPSDT) benefit. The proposed language clarifies and implements the statutory requirement for the pediatric dental EHB to include “the same health benefits for pediatric oral care covered under the dental benefit received by children under the Medi-Cal program as of 2014 [...]”

Section 1300.67.005(g), regarding the Prescription Drug Benefit chart, is amended to reflect the base benchmark plan’s number of drugs in each drug category and class, as determined by federal regulators.

BROAD OBJECTIVES AND BENEFITS OF THE PROPOSED EMERGENCY REGULATIONS

Pursuant to Government Code section 11346.5(a)(3)(C), the broad objectives and benefits of this proposed regulation, 1300.67.005, are that health plans and stakeholders will receive accurate and consistent guidance regarding the EHB requirement and that the Department's EHB regulation will be consistent with the underlying statute, as amended by SB 43. The broad objectives and benefits of each amendment of section 1300.67.005 are further described below.

The amendment of 1367.005, subdivision (b), requires health plans to submit compliance filings by no later than the date that QHP product filings are due. This requirement implements the updated EHB requirement and clarifies the process the Department will use to conduct its compliance review. This amendment also ensures that the Department completes its compliance review in an efficient manner that does not interfere with Covered California activities.

The amendment of section 1367.005, subdivision (c)(2), implements SB 43 by referencing California's new base benchmark plan. This will ensure that the regulation is consistent with the underlying statute.

The amendment of section 1300.67.005, subdivision (c)(3), clarifies the specific end date for "pediatric" EHB benefits, relative to an enrollee's nineteenth birthday. Clarifying that pediatric oral and vision EHB benefits at the end of the month in which the enrollee turns 19 years of age will ensure consistency with federal law and resolve ambiguity regarding when an enrollee ages out of pediatric EHB coverage.

The amendment of section 1300.67.005, subdivision (d)(4)(B), implements federal guidance regarding discriminatory benefit limits on EHB. An age limit on an EHB must be clinically justified to avoid violating state and federal antidiscrimination laws. Removing this limit on aphakia lens coverage will ensure that if the plan imposes an age limit on this EHB, the limit is clinically justified, consistent with federal law and guidance. Additionally, relocating the comma will clarify the regulation.

The amendment of section 1300.67.005, subdivision (d)(10)(C)(ix), relocates the reference to the physical, occupational, and speech therapy benefit. This clarifying change reflects the structure of the new base benchmark plan; updating the structure of the regulation to reflect the new base benchmark plan's description of "habilitative and rehabilitative services" will provide greater clarity and implement the EHB requirement in accordance with the benchmark plan's coverage, as required by state and federal law.

The addition of section 1300.67.005, subdivision (d)(12), implements and clarifies the habilitative and rehabilitative services and devices EHB. Specifying that the habilitative and rehabilitative services coverage must comport with the statutory definition, as amended by SB 43, and specifying that limits for habilitative and rehabilitative services shall not be combined, and specifying that the health plan must include related disclaimers in the plan documents, implements the statutory requirements by ensuring that plans give the Department the information necessary to determine compliance efficiently, using the EHB Filing Worksheet.

The addition of section 1300.67.005, subdivision (d)(13), clarifies the existing requirement for coverage in connection with a clinical trial, and reflects the description of this benefit, as set forth in the new base benchmark plan.

The amendments of section 1300.67.005, subdivision (g), clarifies the regulation by ensuring that the Worksheet is consistently formatted, and ensuring that the Worksheet reflects the amendments to the rest of the regulation. This will make the Worksheet more clear and user-friendly, and will help to ensure efficient review by the Department.

The amendments of section 1300.67.005, subdivision (g), section #10, implement existing law by clarifying the benefits that supplement the base benchmark plan and define California's pediatric oral and vision care EHB. The amendments to this subdivision also clarify that the pediatric vision EHB includes but is not limited to low-vision benefits, which has been a subject of confusion among some health plans. The amendments also clarify that, with regard to the pediatric oral EHB, the required coverage includes the Medi-Cal EPSDT benefit. This new language clarifies and implements the statutory requirement for the pediatric dental EHB to include "the same health benefits for pediatric oral care covered under the dental benefit received by children under the Medi-Cal program as of 2014 [...]."³ EPSDT benefits can result in coverage notwithstanding a benefit limit, such as a frequency limit, when the service is medically necessary for the child, so this clarification will ensure appropriate, medically necessary pediatric dental coverage, as required by SB 43.

The amendment of the section 1300.67.005, subdivision (g), Prescription Drug Benefit chart, implements SB 43 by reflecting the new base benchmark plan's drug count in each drug category and class, as determined by federal regulators. This amendment will ensure that health plans understand the required EHB drug coverage, and that the Department's compliance review is efficient and based on the operative standard. This amendment does not impose any additional costs because it simply reflects the changes to the benchmark plan selected by the Legislature.

DOCUMENTS RELIED UPON

- Health and Safety Code sections 1344, 1367.005;
- 28 C.C.R. section 1300.67.005;
- 45 C.F.R. sections 156.115, 156.122, 156.125,
- Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016; Proposed Rule;
- Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016; Final Rule;
- Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017- Final Rule;
- Kaiser Small Group HMO 30: Kaiser Permanente for Small Businesses Evidence of Coverage for Sample Group Agreement, EOC Number: 4;
- Kaiser California Soft Goods Formulary;
- Kaiser California Durable Medical Equipment Formulary;

³ Health & Saf. Code § 1367.005, subdivision (a)(5).

- Kaiser Permanente Living Donor Guidelines – California Regions;
- Kaiser Foundation Health Plan – California, Utilization Management (UM) Criteria for Transgender Surgery;
- Health Family Program/CHIP Regulation Benefits vs. Medi-Cal Dental Services Scope of Benefits;
- BCBS Association 2014 FEP BlueVision- High Option;
- Medi-Cal Dental Program Provider Handbook; and,
- Centers for Medicare and Medicaid Services, Prescription Drug EHB-Benchmark Plan Benefits By Category And Class.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The proposed regulation does not impose a mandate on local agencies and school districts. No other direct or indirect costs or savings to local agencies or school districts required to be reimbursed under Part 7 (commencing with section 137500) of Division 4 of the Government Code, or other non-discretionary costs or savings imposed on local agencies are applicable. There is no cost or savings in federal funding to the state.

COSTS OR SAVING TO STATE AGENCY

There are no costs or savings to a state agency as a result of the proposed regulation.

COST OR SAVINGS IN FEDERAL FUNDING

Pursuant to Government Code section 11346.5, subdivision (a)(6), the Department has determined that this regulation will have no cost or savings in federal funding to the state.

CONSISTENCY WITH STATE LAW

Pursuant to Government Code section 11346.5, subdivision (a)(3)(D), the proposed regulation was evaluated and was not found to be inconsistent or incompatible with existing state regulations contained in Title 28 of the California Code of Regulations.

COMPARABLE FEDERAL LAW

Existing federal statutes and regulations are comparable to the proposed regulation including section 1302 of Patient Protection and Affordable Care Act (42 U.S.C. Section 18022) and portions of sections 156.20, 156.110, 156.115, 156.125, 156.130, 156.135, 156.140, 156.150 and 156.155 of Title 45 of the Code of Federal Regulations.

DETERMINATION

The Department has not identified any reasonable alternative nor has any stakeholder brought to the attention of the Department any alternative that would be more effective in carrying out the purpose for which the above action is proposed, or that would be as effective and less burdensome to affected private persons, than the proposed action.

REQUIRED NOTICE OF PROPOSED EMERGENCY RULEMAKING ACTION

This statement confirms that the Department complied with the requirement to provide notice of the proposed emergency action pursuant to Government Code section 11346.1, subdivision (a)(2).

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