



**COLORADO**

**Department of  
Regulatory Agencies**

Division of Insurance

**CONFIDENTIAL WORK PRODUCT**

Deputy Administrator and Director Dr. Ellen Montz  
Center for Consumer Information and Insurance Oversight  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Washington, D.C.

November 3, 2021

Re: Mental Wellness Examination Coverage

Dear Director Montz,

In 2019, the federal government gave states new options for updating its EHB benchmark package. Under those rules, the state benchmark selected must pass two tests: the scope of benefits must be equal to the “typical” employer plan and cannot “exceed the generosity” of the 2017 benchmark plan or any of the other options available to the state in 2017. Using these new options, Colorado sought approval of a new benchmark plan for the 2023 plan year.

Colorado’s proposed new benchmark, which it submitted to the federal government for approval in May 2021, included one 45-60 minute visit per year that can include services such as behavioral health screening, education and consultation on healthy lifestyle change, referrals to ongoing mental health treatment, and discussion of potential options for medication, consistent with the contingent coverage requirements in HB21-1068. Colorado’s actuaries concluded that this and other requirements in the proposed 2023 EHB benchmark plan would satisfy both the typicality and generosity tests in the regulations.

On October 12, 2021, the Center of Medicare and Medicaid Services (CMS) notified the Division of Insurance (Division) of its approved benchmark plan update. CMS determined that Colorado’s application satisfies the requirements to change EHB-benchmark plans as set forth in 45 CFR § 156.111. It confirmed that Colorado’s EHB-benchmark plan definition complies with the requirements at § 156.111(a), (b), and (c). It reviewed the actuarial certification and an associated actuarial report from an actuary that: 1) affirms that Colorado’s EHB-benchmark plan provides a scope of benefits that is equal to the scope of benefits provided under a typical employer plan, and 2) Colorado’s EHB-benchmark plan does not exceed the generosity of the most generous among a set of comparison plans.

According to the frequently asked questions (FAQ) published by CMS on October 31, 2018<sup>1</sup> and the Final 2019 HHS Notice of Benefit and Payment Parameters,<sup>2</sup> states that update their EHBs pursuant to the flexibility finalized at 45 CFR § 156.111 will not be subject to new defrayal requirements as a result of its EHB benchmark plan selection. House Bill 21-1068 requires the Division to determine whether the annual mental health wellness exam included in the new benchmark would be subject to defrayal. Given the approval of Colorado’s new EHB benchmark plan for 2023, it is the determination of the Division that the inclusion of the annual mental wellness exam does not create a new state mandate requiring defrayal of any additional premium costs.

<sup>1</sup> CMS/CCIIO, “Frequently Asked Questions on Defrayal of State Additional Required Benefits,” October 23, 2018.

<https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQ-Defrayal-State-Benefits.pdf>

<sup>2</sup> HHS Notice of Benefit and Payment Parameters for 2019; Final Rule, 83 FR 16930 (April 17, 2018)



We would welcome the opportunity to discuss the issue with you in the next 60 days. We will also update our determination as necessary in order to comply with any applicable reporting requirements pursuant to 45 CFR 156.111(f) when the enforcement of that regulation begins.

Sincerely,

Kate Harris  
Chief Deputy Commissioner  
Life and Health Policy

Cc: Rebecca Bucchieri, CMS

