



COLORADO

Department of
Regulatory Agencies

Division of Insurance

Via Email

November 7, 2022

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
Baltimore, Maryland 21244

Re: Alternatives to Opioids for Coloradans

Dear Director Montz,

In 2017, the Department of Health and Human Services (HHS) HHS declared a public health emergency to address the national opioid crisis. As HHS noted in the preamble to its 2019 Notice of Benefits and Payment Parameters encouraging states to provide comprehensive coverage of medication assisted treatment, more than 115 people in the United States die each day from opioid overdoses.¹ In 2020, 1,477 Coloradans died of drug overdoses, a 38% increase from 2019.²

During the 2021 legislative session, the Colorado State legislature passed, and the Governor signed, HB21-1276 to provide Coloradans with alternatives to opioids with the goal of lessening reliance on opioids. Specifically, the legislation (HB21-1276) requires issuers to align cost-sharing amounts for non-pharmacological treatments for pain - including a minimum of six physical therapy visits, six occupational medicine visits, six chiropractic visits, and six acupuncture visits - with the cost-sharing amount for a primary care visit for a non-preventive service. In addition, the law requires that at least one atypical opioid, which is defined as an opioid agonist with a documented safer side-effective profile and less risk of addiction than older opium-based medications, be available to covered persons at the lowest tier on the carrier's drug formulary.

In 2019, the federal government gave states new options for updating their EHB benchmark packages. 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 and received approval of a new benchmark plan for the 2023 plan year that included coverages for alternatives to opioids, including acupuncture and certain pharmacological alternatives. Colorado's actuaries concluded that this and other coverage requirements in the 2023 EHB benchmark plan satisfied both the typicality and generosity tests in the regulations. On October 12, 2021, the Center of

¹ <https://www.govinfo.gov/content/pkg/FR-2019-04-25/pdf/2019-08017.pdf>

² <https://www.coloradohealthinstitute.org/news/opioid-overdose-deaths-54-2020-fentanyl-fatalities-sp>



Medicare and Medicaid Services notified the Division of its approved benchmark plan update for the 2023 plan year.

HB21-1276 directs the Division to determine whether the requirements regarding opioid alternatives would be subject to state defrayal. As noted above, the changes as a result of HB21-1276 largely affect the cost sharing for services. Further, should HHS have a different opinion regarding HB21-1276, it is the Division's position that we are enforcing the requirements of the EHB benchmark plan. For these reasons, HB21-1276 does not create a new state mandate requiring defrayal of any additional premium costs.

Please let us know if you have any questions, or would like to discuss this matter further with the Division.

Sincerely,

A handwritten signature in blue ink, appearing to read 'KH' followed by a stylized flourish.

Kate Harris
Deputy Commissioner of Life and Health

cc: Rebecca Bucchieri, CMS

