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**Date: April 9, 2018**

**Title: Example of an Acceptable Methodology for Comparing Benefits of a State’s EHB-benchmark Plan Selection in Accordance with 45 CFR 156.111(b)(2)(i) and (ii)**

*Background*

Under 45 CFR 156.111 in the HHS Notice of Benefit and Payment Parameters for 2019 Final Rule (2019 Payment Notice) displayed on April 9, 2018,<sup>1</sup> we finalized that States may select a new essential health benefits (EHB) benchmark plan for plan years beginning on or after January 1, 2020. If a State opts to select a new EHB-benchmark plan utilizing any of the selection options at §156.111(a), the State is required under §156.111(e)(2)(i) and (ii) to submit an actuarial certification and associated actuarial report from an actuary, who is a member of the American Academy of Actuaries, in accordance with generally accepted actuarial principles and methodologies.

This actuarial certification and associated actuarial report must affirm that the State’s EHB-benchmark plan provides a scope of benefits that is equal to, or greater than, to the extent any supplementation is required to provide coverage within each EHB category at §156.110(a), the scope of benefits provided under a typical employer plan (“Typical Employer Plan”), as defined at §156.111(b)(2)(i), and that it does not exceed the generosity of the most generous among the plans (“Comparison Plan”) listed at §156.111(b)(2)(ii)(A) and (B). This set of comparison plans for purposes of the generosity standard includes the State’s EHB-benchmark plan used for the 2017 plan year, and any of the State’s base-benchmark plan options used for the 2017 plan year described in §156.100(a)(1), supplemented as necessary under §156.110.<sup>2</sup>

This methodology below outlines an example of one approach for actuaries to follow when comparing benefits in order to complete the required actuarial certification and associated actuarial report under §156.111(e)(2)(i) for typicality. This approach could also be taken for comparing benefits for generosity in order to complete the required actuarial certification and associated actuarial report under §156.111(e)(2)(ii).

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<sup>1</sup> A copy of the final rule is available on the Center for Consumer Information and Insurance Oversight website at: <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/index.html>.

<sup>2</sup> The States’ EHB-benchmark plans used for the 2017 plan year are based on plans from the 2014 plan year, but we occasionally refer to them as 2017 plans because these plans are applicable as the States’ EHB-benchmark plans for plan years beginning in 2017. The Essential Health Benefits: List of the Largest Three Small Group Products by State for 2017 is available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Top3ListFinal-5-19-2015.pdf>. States’ EHB-benchmark plans used for the 2017 plan year are available at [https://www.cms.gov/CCIIO/Resources/Data-Resources/Downloads/Final-List-of-BMPs\\_4816.pdf](https://www.cms.gov/CCIIO/Resources/Data-Resources/Downloads/Final-List-of-BMPs_4816.pdf).

Methodology for Comparing Benefits

The actuarial certification and associated actuarial report required by §156.111(e)(2) are required to comply with generally accepted actuarial principles and methodologies. This includes complying with all applicable Actuarial Standards of Practice (ASOPs). For example, ASOP 41 on Actuarial Communications<sup>3</sup> includes disclosure requirements, including those that apply to the disclosure of information on the methods and assumptions being used for the actuarial certification and report. ASOP 8 on Regulatory Filings for Health Benefits, Accident and Health Insurance, and Entities Providing Health Benefits<sup>4</sup> and ASOP 50 on Determining Minimum Value and Actuarial Value under the Affordable Care Act<sup>5</sup> also provides additional guidance. The actuarial certification for this requirement is in a template incorporated in the Paperwork Reduction Act (PRA) notice on the EHB-benchmark plans (OMB Control Number: 0938-1174).<sup>6</sup> This PRA notice includes an attestation that the standard actuarial practices have been followed or that exceptions have been noted. The signing actuary must be a Member of the American Academy of Actuaries.

One example of an acceptable methodology for comparing the benefits of a “Typical Employer Plan” or the “Comparison Plan” to the State’s proposed EHB-benchmark plan is to compare expected values as follows. Note that there are other requirements that a State’s EHB-benchmark plan must comply with at §156.111(b). If the actuary is using different plans as the “Typical Employer Plan” and “Comparison Plan,” the actuary will need to repeat the below steps.

1. **Select a “Typical Employer Plan” Pursuant to §156.111(b)(2)(i) or a “Comparison Plan” Pursuant to §156.111(b)(2)(ii).** The 2019 Payment Notice defines a “Typical Employer Plan” as either:
  1. One of the selecting State’s ten base-benchmark plan options established at §156.100 and available for the selecting State’s selection for the 2017 plan year; or
  2. The largest health insurance plan by enrollment within one of the five largest large group health insurance products by enrollment in the State, as product and plan are defined at §144.103, provided that:
    - A. The product has at least ten percent of the total enrollment of the five largest large group health insurance products in the State;
    - B. The plan provides minimum value, as defined under §156.145;
    - C. The benefits are not excepted benefits, as established under §146.145(b), and §148.220; and
    - D. The benefits in the plan are from a plan year beginning after December 31, 2013.

<sup>3</sup> [http://www.actuarialstandardsboard.org/wp-content/uploads/2014/02/asop041\\_120.pdf](http://www.actuarialstandardsboard.org/wp-content/uploads/2014/02/asop041_120.pdf).

<sup>4</sup> [http://www.actuarialstandardsboard.org/wp-content/uploads/2014/08/asop008\\_176.pdf](http://www.actuarialstandardsboard.org/wp-content/uploads/2014/08/asop008_176.pdf).

<sup>5</sup> [http://www.actuarialstandardsboard.org/wp-content/uploads/2015/10/asop050\\_182.pdf](http://www.actuarialstandardsboard.org/wp-content/uploads/2015/10/asop050_182.pdf).

<sup>6</sup> The PRA documents include the required template for this actuarial certification. Documents associated with the PRA are posted on the Centers for Medicare & Medicaid Services’ PRA website at:

<https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.

Comments on these documents should be submitted to [www.regulations.gov](http://www.regulations.gov).

To select a “Typical Employer Plan,” the State may need to determine which of the plans in the State meet the above definition and depending on the selection under this definition, the actuary may need to affirm that the plan provides minimum value in accordance with §156.145.

A “Comparison Plan” is defined as the State’s EHB-benchmark plan used for the 2017 plan year, or any of the State’s base-benchmark plan options for the 2017 plan year described in §156.100(a)(1), supplemented as necessary under §156.110. Specifically, if a State selects as a “Comparison Plan” under the above definition a base-benchmark plan that does not provide any coverage in one or more of the categories of EHB, as defined at §156.110(a),<sup>7</sup> the actuary would need to supplement the selected plan with the category or categories of such benefits from another plan that meets the definition of “Comparison Plan,” using the supplementation process described at §156.110(b).

To reduce burden, the actuary may want to consider using the same plan, for both the typicality and the generosity tests, provided that the plan meets the standards at both §156.111(b)(2)(i) and (ii). For example, the actuary may only need to do one plan comparison for the purposes of both of these certification requirements. Specifically, the actuary could use the same plan, such as the State’s EHB-benchmark plan used for the 2017 plan year. That plan would, by definition, be a “Comparison Plan.” Because the State’s EHB-benchmark plan used for the 2017 plan year would simply be one of the State’s base-benchmark plans, supplemented as necessary under §156.110, that plan also could be used for purposes of determining typicality, as a proposed State EHB-benchmark plan that was equal in scope of benefits to the State’s EHB-benchmark plan used for the 2017 plan year within each EHB category at §156.110(a) would be equal to or greater in scope of benefits within each EHB category at §156.110(a) than the base-benchmark plan underlying the EHB-benchmark plan used for the 2017 plan year, to the extent of the required supplementation.

- 2. Calculate the expected value of covering all of the benefits at 100 percent actuarial value in each EHB category in the proposed EHB-benchmark plan and in the “Typical Employer Plan” or “Comparison Plan,” including any necessary supplementation.** The State must use reasonable actuarial assumptions and methods in accordance with generally accepted actuarial principles and methodologies. For example, the actuary may use data acquired from issuers in the State for a recent plan year, and weight the services and benefits provided in each EHB category. Other potential data sources include any all-payer claims databases maintained by the State or other databases that reflect the State’s population.

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<sup>7</sup> The EHB categories at §156.110(a) are: ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care.

- 3. Compare the expected value of covering all of the benefits (at 100 percent actuarial value) in each EHB category of the “Typical Employer Plan” or the “Comparison Plan” to that of the corresponding EHB category of the proposed State’s EHB-benchmark plan.** Under this example methodology, we would consider the State’s proposed EHB-benchmark to satisfy the “Typical Employer Plan” requirement, if the State’s actuary certifies that the expected value of each applicable EHB category of benefits in the State’s proposed EHB-benchmark plan has an expected value equal to, or greater than, 100 percent of the expected value for those same categories of benefits of the “Typical Employer Plan.” In the case of the generosity standard, we would not consider the State’s proposed EHB-benchmark to satisfy the requirement if the expected value for each applicable EHB category of benefits in the proposed State’s EHB-benchmark plan exceeds 100 percent of expected value for those same EHB categories of benefits in the most generous “Comparison Plan.”