

# Benchmark Plan Election Rules

Federal departments have issued final rules to ensure that Essential Health Benefits (EHBs) are not subjected to annual and lifetime dollar limits, as mandated by the Affordable Care Act (ACA). The rules affect plans of any size that are not required to include EHBs, grandfathered and non-grandfathered plans, except for retiree-only plans.

## Essential Health Benefits

While ERISA self-funded plans do not have to include coverage for the 10 categories of benefits known as EHBs\*, most plans do in order to meet the minimum value requirement under the ACA. The self-funded plans that do provide EHBs are prohibited by the ACA from imposing lifetime or annual dollar limits on these benefits.

## Analysis

Does your company's plan include an annual or lifetime dollar maximum?

NO

Your company is not affected by the benchmark plan election rules.

YES

Your company must select a benchmark plan from one of the 51 EHB benchmark plans in a state or Washington, D.C., or in one of the three Federal Employee Health Benefit Programs that supports applying such dollar maximum for plan years **beginning on or after Jan. 1, 2017**.

## Example: ABC Company

ABC Company has an annual or lifetime dollar maximum on chiropractic care, infertility and skilled nursing facilities, so the company has to refer to one of the 51 benchmark plans or one of the three Federal Employee Health Benefit Programs to determine:

Whether the benchmark plan or federal program excludes the benefits

NO

YES

Such benefit is not considered an EHB.

Whether the benchmark plan or federal program applies an annual or lifetime dollar maximum to those benefits

NO

YES

Such benefit is not considered an EHB.

\*EHBs include: ambulatory patient services, emergency services, hospitalization, maternity and newborn services, mental health and substance abuse, including behavioral health treatment, prescription drugs, rehabilitative and habilitative services and devices, laboratory service, prevention and wellness services and chronic disease management, and pediatric services (including oral and vision care).

## Remember benchmark plans have to include EHBs, and they can't apply annual and lifetime dollar maximums to EHBs.

If ABC Company selected the Utah benchmark plan, which does not cover chiropractic care and infertility treatment, the company's application of an annual or lifetime dollar maximum on chiropractic care and infertility treatment does not violate the ACA annual or lifetime dollar maximum prohibition because they are not EHBs under the Utah benchmark plan.

However, skilled nursing facilities are covered under the Utah benchmark plan with a 30-day per plan year limit. Therefore, the company's plan cannot apply a dollar maximum to skilled nursing facilities, but it can apply a quantitative limit.

### Key takeaways

1. Keep in mind that if the benchmark plan provides certain benefits, a company does not have to include those benefits in its self-funded plan.
2. A company will want to document its benchmark plan election and maintain a copy for its records.
3. A company should conduct the analysis annually and review the issues every time the plan design changes.

**PLEASE NOTE:** This material represents a high-level summary of ACA provisions and may not be construed as tax, legal or compliance advice. Please consult your professional benefits adviser or legal counsel regarding how these provisions may impact your specific benefit plan.

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