State & Local Compliance Update

USI EMPLOYEE BENEFITS

September 23, 2025

Washington State Expands EHBs Starting January 1, 2026

Under the Affordable Care Act ("ACA") individual and small group health plans are required to provide coverage for 10 categories of essential health benefits ("EHB"). For plan years after January 1, 2020, states are permitted to set the specific coverage requirements for the EHBs in the state's benchmark plan.[1] For plan years beginning on or after January 1, 2026, Washington has added new coverage requirements to their EHB benchmark plan.

BACKGROUND

The ACA established the EHB requirement for individual and small group plans to ensure plans provided comprehensive items and services in ten categories of benefits.[2] States are permitted to update the specific coverage requirements in their benchmark plan with approval by CMS.

Importantly, self-funded and large group plans are not required to provide coverage for any particular EHBs.

However, to the extent the plan (including self-funded and large group fully insured plans) covers an EHB then:

1. Lifetime and annual dollar limits may not be imposed (in-network and out-of-network); and
2. In network cost sharing accumulates to deductible and maximum out-of-pocket ("MOOP").

As states are permitted to determine which items and services are included as EHBs in the state's benchmark plan, self-funded group plans are permitted to select their benchmark plan. For this purpose, self-funded group health plans may select any state's benchmark plan.

[1] For plan years before 2020, a state could select one of the following as its benchmark plan: 1) the largest (determined by enrollment) small group plan in the state, 2) one of the three largest state employee health benefit plans, 3) one of the three largest federal employee health benefit plans, or 4) the largest commercial non-Medicaid HMO in the state.

[2] For info on EHBs including the list of required EHBs for individual and small group plans, visit: https://www.cms.gov/cciio/resources/fact-sheets-and-faqs/essential-health-benefits12162011a

NEW ESSENTIAL HEALTH BENEFITS

In late 2024, Washington state expanded the list of EHBs that would be included in the state benchmark plan as of January 1, 2026. The specific items and services included will be considered EHBs for any self-funded plan that selects Washington state's benchmark plan. This means lifetime and annual limits and cost sharing aggregation rules apply to any items and services included in the state benchmark plan for any self-funded plan that selects the Washington benchmark plan.

The new EHBs include the following:

- Hearing aids
  - New hearing aid benefit that includes an annual hearing exam and one hearing aid per ear with hearing loss every three years.
  - No lifetime or annual dollar limit.
  - Generally, not subject to the deductible except in qualified high-deductible health plans ("HDHPs") to preserve eligibility to contribution to a health savings account ("HSA").[3]
- Donor human milk
  - Coverage for human milk for inpatient use, when an infant is unable to receive maternal milk or when the parent is unable to produce maternal milk in sufficient quantities or caloric density.
- Artificial insemination
  - Coverage for artificial insemination in vivo, a fertilization treatment in which fertilization occurs internally as opposed to externally and in a lab.

IMPACT ON EMPLOYER SPONSORED HEALTH PLANS

Small group insurance

- Employers purchasing a small group insured health plan[4] in Washington will have these new EHBs included as part of that coverage for plan years beginning on or after January 1, 2026.

Large group insurance

- A large insured group health plan is not required to cover any EHBs. To the extent it does and includes these new EHBs, the plan will be required to comply with the annual/lifetime limit prohibition and cost-sharing aggregation. The changes take effect for plan years beginning on or after January 1, 2026.

Self-funded group health plans

- If a self-funded group health plan includes the above benefits and the plan is benchmarked to WA, then the plan will be required to comply with the annual/lifetime limit prohibition and cost sharing aggregation for any EHBs, including these new benefits. The changes take effect for plan years beginning on or after January 1, 2026.

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[3] RCW 48.43.135

[4] In Washington, a small group for health insurance is defined as an employer with 1-50 employees (RCW 48.43.005(47).

  - Self-funded plan sponsors may need to confirm with their TPA which state benchmark plan is applicable.

- Self-funded plan sponsors may select any of the 50 benchmark plans from any state. A plan sponsor that does not want to treat the expanded list of items and services as EHBs will need to work with their TPA to select the appropriate benchmark plan. Additionally, the benchmark plan should be identified in the SPD so amendment or updates to the SPD may be required.
- Self-funded plan sponsors that selected the Washington benchmark plan and provide fertility services through a third party may need to comply with these requirements as it relates to artificial insemination (i.e., no annual/lifetime dollar limit, cost-sharing aggregation). Discuss with the vendor.
- There is likely no issue for a plan that excludes coverage for the EHB.

RESOURCES

- For information about Washington state's benchmark plan, visit https://www.insurance.wa.gov/laws-rules/legislation-and-rulemaking/legislative-committees-and-work-groups/essential-health-benefits-benchmark-plan
- For HHS Information Bulletin regarding EHBs, visit https://www.cms.gov/cciio/resources/fact-sheets-and-faqs/essential-health-benefits12162011a
- For Information on EHB benchmark plans including links to state benchmark plans, visit https://www.cms.gov/marketplace/resources/data/essential-health-benefits#ehb-benchmark