



MEMORANDUM

TO: Standing Advisory Board
FROM: Debbie Curtis, Senior Deputy Director for Policy & Programs
Mary Beth Senkewicz, Associate General Counsel and Policy Advisor
RE: Benchmark 2017 EHB Plan
Date: May 28, 2015

This memorandum is a follow up to the Standing Advisory Board (SAB) meeting held on May 21, 2015 regarding the 2017 Benchmark EHB Plan. At that time, Board members asked for further information about the following benefits in the three largest small group plans that were displayed on the chart of plans and benefits created by HBX staff: hospice; rehabilitation; habilitation; durable medical equipment; and home health. The Department of Insurance, Securities and Banking (DISB) is in the process of gathering that data and we will distribute it as soon as it is available – hopefully by Monday.

HBX staff has been discussing the issue of the definition of habilitative services. An amendment to our enabling statute added the following definition in 2014:

For the purposes of the essential health benefits benchmark plan, as defined in federal regulations promulgated pursuant to section 1302(a) of the Federal Act, the term “habilitative services” includes health care services that help a person keep, learn, or improve skills and functioning for daily living, including applied behavioral analysis for the treatment of autism spectrum disorder.

CMS federal regulations (45 CFR §156.115) create the federal floor for the definition of habilitative benefits. That federal definition adds the term “devices” so that the definition reads “health care services and devices.” HBX staff is of the opinion that “devices” are included within the term “services.” CCIIO staff confirmed the HBX staff interpretation that “services” includes “devices” and further stated that the addition of the term “devices” does not materially change the definition. It was added to the federal regulation in response to public comments on the proposed rule, since CCIIO staff determined that adding the term “devices” did no harm to the rule and had been requested by numerous public commenters. CCIIO staff also confirmed that the federal definition creates the floor, and that the definition codified in DC Code complies with federal law.

HBX Staff plan to add clarifying language into the Carrier Manual regarding the new federal floor on habilitation.

A copy of the preamble to 45 CFR §156.115 and the rule language is attached.