



September 1, 2023

Pennsylvania Insurance Department  
Attn: Katie Merritt, Director of Policy and Planning  
1326 Strawberry Square  
Harrisburg, PA 17120

**Re: Notice 2023-14 (Essential Health Benefits Benchmark Plan) – Insurance Federation of PA comments**

Dear Ms. Merritt:

Thank you for the opportunity to submit comments on behalf of our commercial health insurer members in response to the above captioned notice that was published in the July 29, 2023, edition of the Pennsylvania Bulletin.

In light of a second round of public comments scheduled for early next year on the Department's application to CMS (which we expect will provide details on proposed changes to our EHB benchmark plan), these comments will focus on process concerns with this initiative.

With that as the backdrop:

**1. Does the Insurance Department have the statutory authority to pursue this change?**

Notice 2023-14 does not contain a statutory citation supporting the Department's authority to pursue this change, and our review of Title 40 – including Act 42 of 2019 - does not indicate the General Assembly has granted this power to the Insurance Department.

And while it is true the Insurance Department selected the current 2017 benchmark plan, that selection was of an existing product already in place. Further, that benchmark selection process is different from what is before us now: basically, independent authority to adopt future benefits without oversight.

In this context, we believe the power to require certain forms of coverage is a matter of statutory authority that falls under the exclusive purview of the General Assembly.

**2. Was this exercise undertaken with the knowledge and consent of the Pennie Board prior to seeking public comment?**

As best we can tell, the answer is no.

We're not sure why that's the case since the Pennie Board ostensibly oversees a large segment of the population affected by this proposed change and should have been consulted prior to the Insurance Department seeking public comment.

And with respect to public comment, we encourage the Department to make available on its web site these comments to ensure all stakeholders are informed of the various viewpoints surrounding this proposal.

**3. From an actuarial value standpoint, how much room is there between the current EHBs and what they could be?**

Notice 2023-14 states: "The plan's generosity may not exceed certain comparison plans from 2017, including the EHB benchmark plan used in 2017." This raises two questions:

- How much actuarial value is there between the levels of coverage today versus what they could be when compared to the most generous 2017 plan?
- And when determining this level of actuarial value, is the Department including (or not including) legislation approved by the General Assembly to adopt or expand coverage since 2017?

**4. What process will the Department employ to adopt some benefits and not others?**

It stands to reason the public comment period will result in recommendations for various forms of coverage that will exceed the outer boundaries of what is permitted. And while there will be compelling reasons for the inclusion of every benefit, the Department will likely be forced to pick some over others.

And that is a cause for concern: Aside from general controls aimed to ensure diversity and anti-discrimination, the Department should not be the sole arbiter of what's contained within a revised set of

EHBs and what is not. Further, will be the decision process to include some benefits and not others be based on clinical data to ensure maximum value to affected policyholders?

Thank you again for the opportunity to comment on this proposal. We support the goal of access to comprehensive coverage for the individual and small group market, but that goal should be guided by two important considerations – affordability and process transparency. To that end, we look forward to continued dialogue with the Insurance Department as this process unfolds.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan C. Greer". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Jonathan C. Greer, President and CEO  
Insurance Federation of Pennsylvania

C: Honorable John DiSanto, Majority Chair of the Senate Banking and Insurance Committee  
Honorable Sharif Street, Minority Chair of the Senate Banking and Insurance Committee  
Honorable Kevin Boyle, Majority Chair of the House Insurance Committee  
Honorable Tina Pickett, Minority Chair of the House Insurance Committee