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National Association of Social Workers
Office of the Executive Director
Elizabeth J. Clark, PhD, ACSW, MPH
Executive Director

January 31, 2012

Steve Larsen
Deputy Administrator and Director
Center for Consumer Information and Insurance Oversight
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Mr. Larsen:

On behalf of the 145,000 members of the National Association of Social Workers (NASW), I am pleased to submit recommendations to strengthen the Essential Health Benefits (EHB) Bulletin (the "Bulletin"), published by the Center for Consumer Information and Insurance Oversight on December 16, 2011. The National Association of Social Workers—the largest membership organization of professional social workers in the country—works to enhance the professional growth and development of its members, to create and maintain standards for the profession, and to advance sound social policies. Social workers are vital members of the interdisciplinary care team – and essential components of our nation's health care safety net. We look forward to working with you and your staff on the forthcoming EHB implementation process.

Require a comprehensive uniform set of national benefits

The Bulletin suggests that instead of a single uniform standard for defining the EHB, HHS will allow States to benchmark to a "reference plan" that is based on a currently available health plan in the state. Allowing states to create their own variations of the EHB package undermines the intent of the Affordable Care Act (ACA) to create a comprehensive, national standard for health insurance coverage. Clear federal minimum EHB requirements and standards are necessary to ensure that vulnerable populations can access comprehensive care that consistently meets their needs across the states.

The ACA directs the Secretary of HHS to define the EHB. There is no authority in the ACA for delegating the development of EHB to states or insurers. The language in the ACA (section 1302-b) unequivocally states that "*the Secretary shall define* the essential health benefits . . ." (emphasis added). Congress intended the Secretary of HHS, not states or health plans, to develop EHB standards.

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Weak state-based EHB packages will harm low-income and vulnerable individuals. The EHB will apply to the Medicaid expansion populations (individuals below 133% of the Federal Poverty Level [FPL]), and will cover individuals in the Exchanges with income as low as 133% FPL. These are extremely low-income populations that are more likely to be in worse health than their wealthier counterparts and unable to pay out of pocket for extra services. A limited scope of benefits will inevitably lead to individuals living in poor and deteriorating health. For example, a plan without adequate mental health screenings will lead to expensive "crisis" treatments, hospitalizations and emergency department use, comorbidity complications, and poor quality of life for individuals. The EHB standard must match the needs of the population it is designed to serve and be affordable.

Additionally, in an era in which improved science and evidence-based practices should move standards of care toward *greater* uniformity and quality, the proposed EHB approach promotes disparity. Allowing states to create their own variations of the EHB package makes it likely that a person in one state will be covered to receive a required, evidence-based practice, while a person in an adjacent state with the same condition will not receive coverage for that practice.

We believe that an EHB approach that draws on the success of proven federal frameworks that promote state flexibility within the context of a defined federal standard, such as the traditional Medicaid model, would offer significant benefits to consumers and States. Such an approach would establish a minimum floor for the EHB package that is uniform across the nation, while also permitting states to go beyond the federal requirement to adapt to local health care preferences.

The design of the EHB package will have a direct impact on the health and well-being of more than 70 million Americans, including many individuals who are poor or near poor. As you are aware, however, states differ widely in their support for the ACA and their commitment to implement and enforce the law in an effective manner. In the absence of a uniform national benefits package, we believe vulnerable populations in many states may be at risk for inadequate coverage. Although we understand the Department's intent to give states flexibility in designing their benefit packages, we believe that a national standard is needed to guarantee strong and specific benefit protections to all covered enrollees. We urge HHS to reconsider this approach.

Include hospice and palliative care

We strongly believe that any EHB package must include hospice and palliative care. Although hospice and palliative care were not specifically enumerated in the 10 covered categories under Section 1302 of the ACA, they are integral components of the health care continuum and are widely covered under current employer plans. Both hospice and palliative care services are comprehensive, interdisciplinary service packages that cut across several of the 10 categories defined in the ACA. Hospice and palliative care are essential benefits for individuals and families coping with serious and life-limiting illness. We urge the Secretary to clarify the EHB

bulletin's ambiguity and include hospice and palliative care services in all future guidance and rulemaking regarding the EHB.

Create a national standard for medical necessity

As you know, individuals' and families' medical decisions vary for a host of reasons, and health coverage must correspond to the needs of each person. Without a well-defined medical necessity standard, the value of the EHB package may be limited. For that reason, we urge HHS to develop a standardized national definition of medical necessity that is not narrowly defined by acute treatment outcomes but, rather, broad enough to include services that improve, maintain, or prevent deterioration of an individual's functional capacity. Unfortunately, the definitions of *medical necessity* commonly used by insurers often impede access to appropriate care, particularly in the area of mental health and substance use treatment. Consequently, federal medical necessity standards for the EHB are critical.

In the absence of a federal EHB package, institute strong federal oversight of state benchmark proposals

If HHS continues to allow states to define their EHBs absent a federal floor, we believe the Department should work closely with States to ensure that a robust package of comprehensive benefits across the full continuum of care is provided for each of the 10 EHB categories and that strong federal oversight of state-defined EHBs is instituted. This will be particularly important for mental health and substance use treatment benefits.

In the absence of a federal EHB package, the default plan should not be a small group plan

We are concerned that the Bulletin proposes a small employer plan as the default benchmark plan for states that do not exercise the option to select a benchmark health plan. Small employer plans are often the weakest and most variable of all options. We are particularly concerned about mental health and substance use treatment coverage in the small employer market, because small employers have been exempt from complying with the federal parity law and small group coverage is generally more limited than coverage available under large group plans. If HHS allows states to benchmark to a small group plan, we urge the Department to change the default plan to one of the large group plans or another comprehensive benefits package defined by HHS.

Limit insurer flexibility

We are also concerned about the Bulletin's proposal to allow insurers flexibility in setting the EHB both within and between categories. Allowing insurers to alter the benefits in their plans would make it much more difficult for consumers to make informed choices among plans. Insurer flexibility would also invite adverse selection through uneven consumer choice of plans. Although the Bulletin requires plans to be "substantially equal" in value, it is unclear who would

be responsible for enforcing this rule, how equality would be measured, and whether consistent standards would be applied.

Assure a transparent process of benchmark selection and updating

Clear public participation standards should be established for EHB decisions to assure that the needs of diverse populations are taken into account. The Bulletin does not address the process states must or should undertake in selecting essential health benefits. A clear, transparent process should guide selection and adjustment of state-level benchmark plans to include the 10 categories of services and other ACA requirements. The public should have adequate time and opportunity to review the potential benchmark plans, including complete benefit information, and to provide testimony and comments.

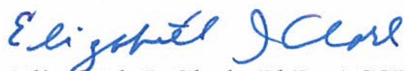
Review and update state EHB packages annually

The Bulletin requests input on how the Secretary should meet the requirement to periodically review and update the EHB. We believe HHS should annually review and update each state's EHB to ensure the EHB is effectively meeting the needs of plan enrollees. Moreover, the Department should take appropriate action if states or plans fail to provide a comprehensive EHB package consistent with the requirements of the ACA.

Consumers and providers should have regular opportunities to participate and influence the EHB determination process and its outcomes. A strong consumer and provider education campaign, implemented by the Department in collaboration with the states, is essential to help consumers understand their coverage and rights. Equally important, HHS and the states should ensure that consumers and providers have the opportunity to participate in the process of determining and updating EHB benefits on the State and federal levels. We urge the Department to ensure transparency and guarantee the opportunity for appropriate public input as states work through this process.

NASW appreciates this opportunity to comment on the EHB Bulletin. We appreciate your careful consideration of our comments and look forward to working with you to develop and implement the EHB and related provisions of the Affordable Care Act. Please contact us if you have any questions or if we can be of further assistance.

Sincerely,



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