

December 5, 2011

The Honorable Kathleen Sebelius
The U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Re: The Development of the Essential Health Benefit Package

Dear Secretary Sebelius:

The undersigned organizations committed to protecting and advancing consumer's health appreciate the efforts underway to ensure the Patient Protection and Affordable Care Act (P. L. 111-148), known as the Affordable Care Act, fulfills its promise of providing affordable and meaningful insurance coverage to all Americans.

We applaud the Administration's commitment to a careful and rigorous process when crafting the Essential Health Benefit (EHB) package, as stipulated by the Patient Protection and Affordable Care Act. Given that all new health plans selling coverage to individuals and small groups—both in and outside of the new Exchanges—must offer benefits within at least the 10 broad categories of services, this provision will affect millions of consumers who purchase coverage for themselves and their families.

To ensure that services covered under the EHB package are truly meaningful for consumers, the Secretary's guidance should cover the physical, mental, and behavioral health care services that people need to get and stay as healthy and functional as possible. Services deemed "essential" should include all necessary care, medicines and equipment, including preventive services and treatment needed by those with serious and chronic conditions. The EHB should encompass a comprehensive set of services that are necessary to maintain or promote health and function, or to prevent or treat illness, injury and lifelong conditions. If the services covered as Essential Health Benefits are too narrowly defined, individuals experiencing illness, injury, or health conditions that are not adequately covered will be exposed to considerable out-of-pocket health care costs, putting their financial and physical well-being at risk.

We ask the Agency to consider the following principles when developing the Essential Health Benefit Package:

- **The Essential Health Benefits must be comprehensive.**
 - The Secretary should recognize that the intent of the ACA is to address the insufficient coverage currently sold in the individual and small group markets; thus these plans should not serve as a model for coverage.
 - Congress intended for a comprehensive set of benefits that would correct longstanding coverage gaps in the individual and small group markets, as evidenced by the fact that maternity care, mental health and substance abuse services—categories that are routinely not covered by individual and small group insurance plans—are explicitly included as categories.
 - The purpose of the ACA is to ensure that Americans have access to affordable, comprehensive care. While there are many tools in the ACA that significantly reduce the number of people without insurance, the EHB are an important tool in guarding against under-insurance.
 - We agree that affordability and rising premiums are major concerns, and the ACA provides several effective mechanisms to address rising health care costs, such as greater

transparency and premium rate review. Limiting covered services, however, is unlikely to reduce overall health care costs. Not covering a service as an essential benefit would likely result in uncompensated care and increased cost-shifting to consumers, rather than health care savings within the system.

- The EHB must take into account the health care needs of diverse populations and should protect vulnerable and traditionally underserved groups, who have historically had a difficult time obtaining coverage for the services they need.

- **The EHB package must adopt strong federal standards.**
 - The Secretary should develop a consistent, specific, and standard benefit package.
 - The Affordable Care Act, in recognizing the significant variation in health coverage and medical practice across states and regions, sought to bring greater standardization of benefits to insurance markets. The EHB serve as an important anchor of the law and is critical to giving consumers confidence that the plan they purchase will provide a reliable core set of benefits. “Essential benefits” should be relatively standardized for all consumers regardless of geography.
 - A limited array of standardized benefit packages is essential to sustaining other protections included in the ACA, including the requirement that qualified health plans meet a target actuarial value, the caps on cost-sharing, and the prohibition on annual and lifetime limits.
 - Insurers and states should be explicitly barred from determining which services are covered under the federally defined EHB.

- **The Secretary must define Medical Necessity.**
 - The Secretary should develop a standardized definition of medical necessity.
 - The definition of medical necessity should not be narrowly defined by acute treatment outcomes but rather broad enough to include services that improve, maintain, and promote health and function or that prevent deterioration of a patient’s capacity to function.
 - The definition of medical necessity should allow for a broad range of evidence to be considered, including the individual’s physician’s recommendations, clinical trials, professional standards of care, and expert opinion.
 - While we oppose arbitrary benefit limits, any consideration of benefit limits must be in line with the Secretary’s definition of medical necessity.

- **Services covered as part of the Essential Health Benefits must have a foundation in both evidence-based medicine and best practice standards.**
 - Clinical evidence and best practice standards of care should guide the development of the package, not cost.
 - While we believe it is critical that the EHB have a strong basis in clinical evidence, we recognize that there are limitations to using strict clinical evidence recommendations. This is especially true for populations traditionally excluded from clinical trials, such as women, people with disabilities, children and certain racial and ethnic groups. The EHB should be based on the most up-to-date and reliable clinical evidence available, but if that evidence is not available or differs by demographic group, there should be allowances for physician discretion.
 - The coverage of treatment for chronic conditions should be consistent with current treatment and clinical guidelines. Treatments that do not result in improvement should not be denied when the goal of treatment is the prevention of deterioration of function.

- The Agency already recognizes a list of evidence based preventive services considered necessary for patients’ health and wellbeing. Given the strong scientific evidence backing these services, the Secretary should explicitly incorporate those preventive service covered without cost sharing under Section 2713 of the ACA into the Essential Health Benefits, so that these services can be utilized by all who need them, including those on Medicaid or Basic Health plans.

- **The Secretary should carefully balance considerations of affordability and comprehensiveness.**
 - The health care needs of consumers should be the framework for balancing affordability and comprehensiveness.
 - The Secretary should not make premiums the sole focus of cost considerations; rather the Secretary should take into account other factors such as out-of-pocket costs, long-term cost savings of certain services, and the costs of not covering certain services.
 - Benefit designs that encourage lower-cost treatment choices among therapies presumed to be of comparable efficacy (such as tiered prescription drug benefits) should ensure exceptions be allowed for patients with clinical reasons not to take the least costly alternative. High cost-sharing for specialty drugs with no generic equivalent is discriminatory against certain patients and should be prohibited.
 - A strong emphasis should be placed on treating chronic diseases fully under the EHB. Chronic diseases are the major cost-driver in the health system, so the EHB provides a unique opportunity to more systematically control costs and improve health outcomes.

- **The design of the Essential Health Benefits must comply with nondiscrimination standards.**
 - Under Section 1302, the Secretary is prohibited from discriminating against individuals because of their age, disability, or expected length of life in defining “essential health benefits.”
 - In addition, as outlined in Section 1302, in defining the “essential health benefits” the Secretary must “take into account the health care needs of diverse segments of the population, including women, children and persons with disabilities, and other groups”
 - It is important to note, however, that Section 1557 of the Affordable Care Act additionally prohibits discrimination on the basis of race, color, national origin, sex, age and disability in health programs or activities that receive federal financial assistance, are administered by an Executive agency, or were established by Title I of the ACA.
 - In order to ensure that women, people with disabilities and other vulnerable groups are not discriminated against, the EHB should, as the ACA indicates, provide an “appropriate balance” among the 10 categories.
 - In addition to their scope and definition, the EHB must also not discriminate in benefit design, including cost sharing.
 - There should be strong oversight and enforcement mechanisms to ensure nondiscrimination and compliance with Section 1557.

- **The Secretary should develop consistent standards for the calculation of actuarial value.**
 - The Essential Health Benefits Package includes a requirement for plans to meet actuarial value standards that will sort them into coverage levels (Bronze, Silver, Gold, etc.). The Secretary should develop detailed standards to ensure that actuarial values are calculated consistently across plans and coverage levels.
 - Actuarial value calculations should be based on a standard population and standard data set.

- In developing the essential health benefits requirements, the Secretary should ensure that differences in actuarial value result primarily in differences in cost-sharing charges, not differences in covered benefits. This will make it possible for consumers to better understand their coverage options and reduce the ability of insurers to use benefit variation to cherry pick healthier enrollees while avoiding those with expensive health conditions.
- **The Secretary must define a clear and transparent process for updating the services covered as Essential Health Benefits.**
 - The Secretary should establish a transparent public process for regularly reviewing and updating the essential health benefit package overseen by an independent advisory committee that includes meaningful consumer representation.
 - In addition to a general process for regularly updating the EHB, there should be a process for determining whether or not new technologies and treatments will be covered, with a specification that immediate (off-cycle) updates are appropriate in the case of important breakthroughs in treatment or if a covered treatment is found to be unsafe.
 - Appeals decisions should be published and the Secretary should consider both the decisions and the subject of consumer complaints and appeals in updating the essential benefits package.
 - **The Secretary must develop a process for dealing with state mandates.**
 - State mandates that have been subject to medical assessment and review and reflect current medical practice should be shown deference for inclusion in the EHB package.
 - The Secretary should clearly define what it means for states to “defray the cost” of mandated benefits that are not included in the EHB.
 - The Secretary should conduct a thorough analysis of current state mandated benefit laws. That analysis should be compared to the contents of the ten categories listed in the statute. The comparison would reveal areas where consumers may lose coverage.
 - Continuity of care should factor into decisions about existing state mandates.
 - The EHB should function as a baseline coverage level—a foundation upon which states are prohibited from falling below, but permitted to go beyond at their discretion to mandate benefits that are not included in the federal EHB package.

As you continue to take steps to implement the Affordable Care Act, we urge you to create a benefit package that address the insufficient coverage currently sold in the individual and small group markets and that covers the physical, mental, and behavioral health care services that people need to get and stay as healthy and functional as possible. Please direct any questions regarding this letter to Judy Waxman at jwaxman@nwlc.org. We look forward to working with you to improve the health and lives of all Americans and thank you for your consideration.

Sincerely,

American Association on Health and Disability
 American Cancer Society Cancer Action Network
 Anxiety Disorders Association of America
 American Diabetes Association
 American Federation of State, County and Municipal Employees

American Nurses Association
Autism Speaks
Community Access National Network
Community Anti-Drug Coalitions of America
Community Catalyst
Dialysis Patient Citizens
Disciples Justice Action Network
Disability Rights Education & Defense Fund
Families USA
Georgetown University Center for Children and Families
Health Care for All
Health Care for America Now
HealthHIV
HIV Medicine Association
HIV Prevention Justice Alliance
Mental Health America
National Alliance on Mental Illness
National Association of State Mental Health Program Directors
National Council of Jewish Women
National Health Law Program
National Multiple Sclerosis Society
National Partnership for Women and Families
National Viral Hepatitis Roundtable
National Women's Law Center
Paralyzed Veterans of America
Planned Parenthood Federation of America
Service Employees International Union
State Associations of Addiction Services
TeenScreen National Center for Mental Health Checkups
The AIDS Institute
The Arc of the United States
The Association for Ambulatory Behavioral Healthcare
The Carter Center Mental Health Program
The Epilepsy Foundation
The National Association of Addiction Treatment Providers
Treatment Action Group
Treatment Communities of America
United Cerebral Palsy
United Church of Christ
United Spinal Association
United States Psychiatric Rehabilitation Association