

Mental Health Liaison Group

January 31, 2012

Mr. Steve Larsen
Deputy Administrator and Director
Center for Consumer Information and Insurance Oversight (CCIIO)
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Mr. Larsen:

The undersigned national organizations in the Mental Health Liaison Group appreciate the opportunity to comment on the proposed approach for rulemaking to define Essential Health Benefits (EHB), as outlined in the December 16, 2011, Essential Health Benefits Bulletin.

Maintain Strong Federal Role

The MHLG supports a comprehensive essential health benefit package that provides a clear federal minimum standard (or national floor) to ensure coverage that meets the health care needs of diverse populations, including individuals with disabilities and chronic conditions. We recognize the EHB proposal departs from a national standard and extends wide flexibility to states and insurers on providing an EHB package to consumers based on a benchmark plan approach. We urge the Department of Health and Human Services to maintain a strong federal role with regard to the EHB to comply with the Affordable Care Act's nondiscrimination and preventive services requirements (Section 2713), as well as to implement and enforce the Mental Health Parity and Addiction Equity Act (MHPAEA). Additionally, adequate oversight of plans and insurers is vital to eliminating health care inequities and disparities addressed by the Affordable Care Act. However, we offer the following comments related to the improvement of the intended regulatory approach outlined in the EHB Bulletin.

Parity for Mental Health and Substance Use Disorders

We applaud HHS for reinforcing in the EHB Bulletin the Affordable Care Act's extension of the MHPAEA to the individual market, and the application of parity to mental health and substance use disorder benefits in the context of the EHB. Your stated goal of pursuing an approach that ensures compliance with MHPAEA is well supported, and we assert implementation and enforcement of the parity protections must be a priority. Additionally, we ask for further guidance on the application of parity within the proposed benchmark plan approach – not withstanding our support for defining, at a minimum, mental health and substance use disorder services.

It is also important that consumers benefit from having information available to make meaningful decisions concerning their rights and available services. Thus we recommend HHS engage in a strong consumer and family education campaign that provides informed “navigation” services to individual consumers and their families. And it is paramount that HHS provide strong

oversight to ensure states are adequately including mental health and substance use disorder services, including behavioral health treatments, to represent meaningful coverage for consumers. This is particularly important because the EHB Bulletin does not address matters of determining medical necessity nor does it specify a minimum definition for mental health and substance use disorder benefits. Protecting against restrictive access to services and rejecting insurance guidelines that fail to consider the individual needs of a beneficiary are critical. Consistent with CCIIO's FAQs Set 5 (parity), consumers must be afforded the right to have disclosure of the medical criteria used to make benefit determinations.

We also ask for guidance on the calculation of actuarial value and Medicaid benchmark plans, noted as forthcoming in the Bulletin, to be released without delay, and allow the public sufficient time to comment. This additional information could affect the merits of parity. And lastly, we urge HHS to swiftly promulgate regulations governing MHPAEA's application to Medicaid managed care plans.

Prevention, Rehabilitation, Habilitation and Prescription Drugs

Early identification of many conditions and diseases, including mental disorders, is critical to ensuring the best possible outcome. For this reason, we urge HHS to assert the application of ACA Section 2713, Coverage of Preventive Health Services, to the EHB to ensure coverage without cost sharing of all recommended preventive services.

Rehabilitative and habilitative services can be critical to a person with a disability or other mental health condition. They are necessary to restore functional capacity, minimize limitations on physical or cognitive functions, and maintain or prevent deterioration of functioning as a result of an illness, injury, disorder or other health condition. These services are also vital to the prevention of secondary disabling conditions.

We urge HHS to use Medicaid and the definitions approved by the National Association of Insurance Commissioners of habilitation and rehabilitation (which references psychiatric rehabilitation) as a guide. Psychiatric rehabilitation services for children and adults with mental illness are vital to resiliency and recovery efforts and help avoid placements in more costly care settings. As a result, adults are able to thrive in the community and children can succeed in school. In fact, many schools and school districts receive Medicaid reimbursement for such services provided in the school setting.

The Bulletin asserts that flexibility should allow for plans to cover a broad range of prescription drug benefits therapeutic classes and categories, like in Medicare Part D. Unfortunately, it permits plans to cover only a single drug in each therapeutic category rather than Part D's requiring at least two drugs in each therapeutic class. In addition, Part D rules set aside six therapeutic categories – antidepressants, antipsychotics, anticonvulsants, antineoplastics, immunosuppressants and antiretrovirals – and require plans to include “all or substantially all” of these drugs on their formularies. This important patient access protection should be integrated in the EHB.

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State Mandates and Benefit Design Flexibility

We urge HHS to develop an approach that requires states to provide all state mental health, substance use and behavioral health treatment mandated benefits and parity laws in the EHB. HHS should reject the benefit design flexibility as we strongly believe it would create problems of adverse selection and confusing and deceptive marketing practices by insurance companies.

We thank you for considering our recommendations and look forward to working with you and your staff as you implement the Affordable Care Act.

Sincerely,

American Academy of Child and Adolescent Psychiatry
American Art Therapy Association
American Association for Geriatric Psychiatry
American Association for Marriage and Family Therapy
American Association for Psychoanalysis in Clinical Social Work
American Association for Psychosocial Rehabilitation
American Association of Pastoral Counselors
American Association on Health and Disability *
American Counseling Association
American Dance Therapy Association
American Foundation for Suicide Prevention/SPAN USA
American Group Psychotherapy Association
American Mental Health Counselors Association
American Occupational Therapy Association
American Psychiatric Association
American Psychiatric Nurses Association
American Psychoanalytic Association
American Psychological Association
American Psychotherapy Association
Anxiety Disorders Association of America
Association for the Advancement of Psychology
Association for Ambulatory Behavioral Healthcare
Bazelon Center for Mental Health Law
Center for Clinical Social Work
Children and Adults with Attention-Deficit/Hyperactivity Disorder
Clinical Social Work Association
Clinical Social Work Guild 49, OPEIU
Confederation of Independent Psychoanalytic Societies
Corporation for Supportive Housing *
Depression and Bipolar Support Alliance
Eating Disorders Coalition for Research, Policy & Action

Emergency Nurses Association
The Jewish Federations of North America
Mental Health America
National Alliance on Mental Illness
National Alliance to Advance Adolescent Health
National Association for Children's Behavioral Health
National Association for Rural Mental Health
National Association of Anorexia Nervosa and Associated Disorders -- ANAD
National Association of County Behavioral Health and Developmental Disability Directors
National Association of Mental Health Planning & Advisory Councils
National Association of Psychiatric Health Systems
National Association of School Psychologists
National Association of Social Workers
National Association of State Mental Health Program Directors
National Coalition for Mental Health Recovery
National Council for Community Behavioral Healthcare
National Council on Problem Gambling
National Disability Rights Network
National Federation of Families for Children's Mental Health
No Health Without Mental Health *
Schizophrenia and Related Disorders Alliance of America *
School Social Work Association of America
TeenScreen National Center for Mental Health Checkups
Tourette Syndrome Association
Treatment Communities of America
U.S. Psychiatric Rehabilitation Association
Witness Justice

* Not a MHLG member