National Association of Psychiatric Health Systems

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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
200 Independence Avenue, SW, Room 445-G
Washington, DC 20201

RE: HHS "Essential Health Benefits Bulletin"

Dear Mr. Larsen,

As an association representing behavioral healthcare provider organizations and professionals, the National Association of Psychiatric Health Systems (NAPHS) appreciates the opportunity to comment on the December 16, 2011, "Essential Health Benefits Bulletin" issued by the Department of Health and Human Services (HHS). Founded in 1933, NAPHS advocates for behavioral health and represents provider systems that are committed to the delivery of responsive, accountable, and clinically effective prevention, treatment, and care for children, adolescents, adults, and older adults with mental and substance use disorders. Our members are behavioral healthcare provider organizations, including more than 700 psychiatric hospitals, addiction treatment facilities, general hospital psychiatric and addiction treatment units, residential treatment centers, youth services organizations, outpatient networks, and other providers of care. Our members deliver all levels of care, including inpatient care, residential treatment, partial hospitalization, and outpatient services.

EHBs ARE CRITICAL TO MILLIONS OF AMERICANS WITH MENTAL AND SUBSTANCE USE DISORDERS.

The design of the Essential Health Benefits (EHB) requirements of the *Affordable Care Act* (ACA) will have a direct impact on the health and well-being of more than 70 million Americans. It will also impact millions of Americans with mental health and substance use disorders.

That is why we applaud the Bulletin's explicit recognition of the ACA requirement for the EHB to include mental health and substance use disorder services and recognition that these behavioral benefits must be consistent with the requirements of the *Mental Health Parity and Addiction Equity Act* (MHPAEA).

We also appreciate the Department's recognition that the ACA required that all public and private plans subject to EHB – inside and outside the insurance exchanges – be required to offer mental health/substance use disorder (MH/SUD) benefits at parity with medical/surgical benefits offered by the plan.

WE BELIEVE A COMPREHENSIVE EHB WAS THE INTENT OF CONGRESS.
Although we understand the Department's rationale to allow state flexibility in developing health plans through the benchmark plan approach, we continue to believe that a comprehensive federal EHB is a more effective way to ensure that all Americans (wherever they reside) can get the same basic benefits. We also believe that was the intention of Congress that the EHB be national in scope.

However, if the Department decides to stay with the state flexibility approach, we would urge the Department to make sure that the MH/SUD benefits in all EHB plans be comprehensive and provide for the full continuum of medically necessary services.

As we all know, there has been a long history of insurance discrimination against those with MH/SUDs, so it very important to be as clear as possible regarding not only the coverage of these disorders, but the breadth of that coverage. We know that medical/surgical benefits offer a full continuum of services, but that has not generally been the case with MH/SUD benefits. Therefore, it is very important that the full range of services covered in the medical/surgical arena should apply to MH/SUD benefits as well. That is why we would ask that strong federal oversight of state-defined EHBs be a high priority.

A FINAL PARITY RULE AND/OR GUIDANCE IS NEEDED.
We believe that to effectively implement the EHB requirements for MH/SUDs, the Department needs to issue a final rule and/or subregulatory guidance on MHPAEA to clarify some key provisions of the regulatory structure of the federal parity law, including scope of service, non-quantitative treatment limits (NQTLs), disclosure of medical criteria, and Medicaid managed care parity. Currently, because of the lack of full clarity in these areas, we believe health plans are not in full compliance with the statute and the interim final regulations, which is resulting in continued discrimination for people with MH/SUDs.

This is especially critical because the federal parity law is intrinsically linked to the EHB requirements because the ACA requires that the EHB include MH/SUD coverage at parity based on the federal parity requirements. Without further clarification with respect to the interim final regulation, the EHB requirements will not be able to be effectively implemented regarding behavioral health benefits.

We would also ask the Department to aggressively enforce the MHPAEA on the federal level and work with appropriate state officials to enforce the MHPAEA on the state level as well.

THERE SHOULD BE CLEAR GUIDANCE THAT MHPAEA AND BENEFIT FLEXIBILITY STANDARDS PRECLUDE DOWNWARD ACTUARIAL ADJUSTMENT OF MH/SUD BENEFITS.
The Bulletin makes clear that the Department will permit actuarial adjustment and allow plans to offer benefits that are "substantially equal" using the same actuarial equivalency standard that applies to plans under the Children's Health Insurance Program (CHIP). As

you know, CHIP reauthorization amended §2103 of the *Social Security Act* to ensure compliance with the requirements of the MHPAEA in the case of a state child health plan that provides both medical and surgical benefits and mental health or substance use disorder benefits, and protected MH/SUD services from actuarial adjustment. Similarly, the ACA amended §1937 to extend the MHPAEA requirements to Medicaid benchmark plans and protect MH/SUD services from actuarial adjustment in Medicaid benchmark or benchmark equivalent benefits packages.

We ask that the Department include language in the final EHB guidance, as well as the upcoming actuarial value guidance, explicitly stating the MHPAEA and CHIP flexibility standards both preclude downward actuarial adjustment to MH and SUD benefits in the EHB.

The Bulletin also explains that the Department is considering permitting substitutions across benefit categories as well as within them. We are concerned that this flexibility could weaken coverage and reduce or eliminate important benefits, dilute categories, and undermine the EHB as a whole. We urge the Department to prohibit substitution of benefits across categories and only allow flexibility to improve and expand benefits. For the purpose of the MH/SUD benefit category, the application of the MHPAEA and CHIP flexibility standards to the EHB would also similarly protect it from across-category benefit substitution. If the Department allows substitution across categories, we ask that the guidance explicitly states this prohibition.

CONCLUSION

Thank you for providing the opportunity to provide feedback on the essential health benefits Bulletin. We strongly support the goals and objectives of the ACA to ensure that all Americans have access to high-quality, cost-effective care.

We look forward to working with you as you move forward in implementing the EHB requirement and the overall ACA.

Sincerely,

/s/

Mark Covall
President/CEO