



**Association for Behavioral  
Health and Wellness**

*Advancing benefits and services  
in mental health, substance use  
and behavior change.*

**January 31, 2012**

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

Dear Mr. Larsen:

The Association for Behavioral Health and Wellness (ABHW) is an association of the nation's leading behavioral health and wellness companies. These companies provide an array of services related to mental health, substance use, employee assistance, disease management, and other health and wellness programs to over 115 million people in both the public and private sectors. ABHW and its member companies use their behavioral health expertise to improve health care outcomes for individuals and families across the health care spectrum.

On behalf of its members, ABHW has the following comments on the Essential Health Benefits Bulletin that was released on December 16, 2011. Specifically, below we address the place for transparency in the process for determining the benchmark plan in each state, the additional information regarding the different possible benchmark plans in the various states that would put stakeholders in a better position to comment on the proposed approach for defining essential health benefits (EHB), the need to maintain the ability to manage benefits regardless of the benchmark plan that is chosen, specific circumstances that must be taken into account when attempting to define habilitative services, and the need to maintain the implementation phase wherein stakeholders are assisted in complying with the requirements of the Affordable Care Act and the interaction of those requirements with existing requirements, such as the Mental Health Parity and Addiction Equity Act.

We appreciate The Department of Health and Human Services' (HHS) recognition and reinforcement that, both from a statutory and quality of care standpoint, mental health and substance use disorders must be a part of the EHB. Treatment for these conditions is a critical component of a person's health insurance benefit. ABHW wants to ensure that when a state chooses a benchmark plan, mental health and substance use disorders are appropriately covered. Our concern is heightened in situations where the benchmark plan does not include mental health and substance use disorder benefits and the state needs to supplement the missing benefit category. Therefore, we would appreciate language in a proposed rule or other guidance that ensures appropriate protection of the mental health and substance use disorder benefit. Appropriate protection would include transparent processes for the selection of both the benchmark plan and a supplemental benefit category and active participation by stakeholders, including the ABHW and its members, in the selection process.

While ABHW, and most other stakeholders, anticipated that the definition of EHB would be consistent across all states, we also recognize the value of states having some flexibility in this area. However, without knowing what the mental health and substance use disorder benefits look like in all of the possible benchmark plans in each state, it is somewhat difficult for ABHW to provide detailed comments on HHS' proposed approach for determining the EHB. Therefore, to facilitate ABHW's and other stakeholders' provision of meaningful comments, we hope that HHS will expeditiously release any additional information it has on all of the possible benchmark plans in each state. ABHW members currently provide various benefit packages in each state, so the framework described in the

Bulletin is certainly operationally feasible. However, it is unlikely to lead to the same administrative savings that could have been obtained from having one consistent federal EHB package assuming, of course, that the scope of the federal EHB package was reasonable.

Additionally, it is important that HHS recognizes the importance of maintaining the ability of behavioral health and wellness companies and other insurers to appropriately manage the benefits contained within the EHB package. The basic principles of managed care are what will help ensure a high quality and affordable benefit.

The Bulletin also asks for comments on the inclusion of maintenance of function as a part of the definition of habilitative services, a somewhat undefined benefit. In developing a definition, HHS should take into account what is the level of function that should be achieved or maintained. Additionally, because of the potentially far-reaching impact of the definition, we encourage the process to be transparent in nature and include all interested stakeholders.

Finally, especially during the transition period, we hope that the same basic approach to implementation is maintained as was set forth in the September 20, 2010 Frequently Asked Questions, particularly relating to the interaction of the Mental Health Parity and Addiction Equity Act (MHPAEA) and the EHB:<sup>1</sup>

#### **Compliance**

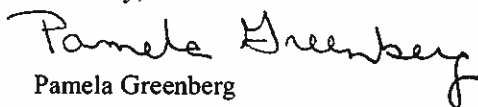
Q1. Under the Affordable Care Act, there are various provisions that apply to group health plans and health insurance issuers and various protections and benefits for consumers that are beginning to take effect or that will become effective very soon. What is the Departments' basic approach to implementation?

A1. The Departments are working together with employers, issuers, States, providers and other stakeholders to help them come into compliance with the new law and are working with families and individuals to help them understand the new law and benefit from it, as intended. Compliance assistance is a high priority for the Departments. *Our approach to implementation is and will continue to be marked by an emphasis on assisting (rather than imposing penalties on) plans, issuers and others that are working diligently and in good faith to understand and come into compliance with the new law.* This approach includes, where appropriate, transition provisions, grace periods, safe harbors, and other policies to ensure that the new provisions take effect smoothly, minimizing any disruption to existing plans and practices. (emphasis supplied).

For instance, while we understand the need for benefit design flexibility within categories and possibly across categories of EHBs, this potential changing of benefits will impact the parity calculation of the mental health and substance use benefits and, depending on the scope of the changes, may make simultaneous strict compliance with the requirements of the MHPAEA and the EHB difficult. This is because plans will have to realign their behavioral health benefit so that it aligns with the alterations made to the benchmark plan.

We appreciate the opportunity to comment on the Bulletin and if you would like to discuss our comments please contact Pamela Greenberg, President and CEO, at (202) 449-7660 or [greenberg@abhw.org](mailto:greenberg@abhw.org). We look forward to the opportunity to comment on a notice of proposed rulemaking.

Sincerely,



Pamela Greenberg  
President and CEO  
Association for Behavioral Health and Wellness

<sup>1</sup> See [http://cciio.cms.gov/resources/factsheets/aca\\_implementation\\_faqs.html](http://cciio.cms.gov/resources/factsheets/aca_implementation_faqs.html).