

September 30, 2015

Kevin Counihan
Deputy Administrator and Director,
Center for Consumer Information and Insurance Oversight
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Via email: FFEcomments@cms.hhs.gov

Re: 2017 Texas Essential Health Benefits Benchmark Plan Comments

Dear Mr. Counihan:

The Texas-based organizations signed onto this letter appreciate the opportunity to comment on the proposed Texas Essential Health Benefit (EHB) benchmark for 2017 released on August 28, 2015. All of our organizations are dedicated to expanding access to health care in Texas, including by ensuring that the state's EHB benchmark conforms to federal law and will facilitate access to a comprehensive set of health care benefits in 2017 and beyond.

Texas did not actively select its 2017 benchmark plan nor conduct a public process to collect public input on benchmark plan options and methods to supplement missing EHB categories. Instead, Texas defaulted to the most popular small group plan from 2014, which falls under CCIIO's transitional policy for non-grandfathered small group policies, meaning it is not required to comply with all ACA consumer protections, including EHB.

Texas is also a "direct enforcement" state under the Affordable Care Act—one of just five nationally—meaning that Texas does not enforce ACA consumer protections for policies sold in the state. Texas relies entirely on the federal government to enforce all ACA health insurance market reforms.

Given that Texas defaulted to a benchmark that is not fully compliant with the ACA and that Texas consumers rely on federal regulators to enforce all ACA consumer protections, CCIIO should take the steps listed below to ensure that Texans with plans subject to EHB in 2017 and beyond will benefit from the full scope of benefits guaranteed by the ACA:

- CCIIO should independently review Texas' proposed benchmark's evidence of coverage and other plan documents and identify specifically where the plan falls short of compliance with ACA regulations and guidance.
- CCIIO should share the findings of its detailed review with issuers, so that they are on notice about where alignment with the benchmark would violate federal standards and preclude plan certification. CCIIO should also share its findings with the Texas Department of Insurance and make it publicly available to facilitate engagement of stakeholders in evaluating plan designs.

- In Texas, CCIIO is solely responsible for reviewing and approving forms for QHPs offered in the Marketplace. CCIIO must carefully review plans submitted for certification in direct enforcement states and then take action ensure that coverage complies with all ACA market reforms and reflects the full scope of EHB.

We are grateful that CCIIO made supporting plan documents for proposed EHB benchmarks widely available. We have reviewed the plan documents for Texas and offer up the following areas of concern where it appears as if the benchmark is out-of-compliance with federal rules.

Mental Health Parity. Texas’ default EHB benchmark appears to contain the following provisions that violate the Mental Health Parity and Addiction Equity Act and subsequent federal regulations:

- The plan contains a calendar year maximum of 10 inpatient days and 25 outpatient visits for mental health care.
- The plan limits treatment for chemical dependency to a lifetime limit of three separate series of treatments per individual.
- The plan contains an exclusion for any services or supplies provided for treatment of adolescent behaviors disorders, including conduct disorders, and oppositional disorders.
- The plan contains an exclusion for the residential level of treatment for chemical dependency in a chemical dependency treatment center.
- The schedule of coverage indicates that preauthorization is required for benefits in the categories of Treatment for Chemical Dependency, Serious Mental Illness, and Mental Health Care. However, the schedule does not list that same blanket requirement for any other categories of benefits including Inpatient Hospital Expense, Medical/Surgical Expenses, or Extended Care Expenses. It is possible that the proposed benchmark applies non-quantitative limits like prior authorization in a more restrictive manner on mental health and substance use disorder benefits, which could be a violation of parity.

Habilitative Services. We applaud HHS’ establishment of a uniform definition of habilitative services, which will help ensure that patients have access to the full range of services they need to attain and maintain their highest developmental potential. We ask that CCIIO ensure the new definition is incorporated into the benchmark and enforced through form approvals to ensure that patients who need habilitative services and devices have timely access to benefits. The following provisions in the Texas default benchmark raise concerns:

- The plan has an arbitrary 35-visit limit combined across for physical therapy (PT), occupational therapy (OT) and/or speech therapy (ST) services. We believe that coverage of habilitative services and devices should be based on patient need without arbitrary age, visit, or other limits.
- It is unclear whether the default benchmark plan covers habilitative benefits for anyone other than individuals diagnosed with autism. The plan contains an exclusion for any occupational therapy services which do not consist of traditional physical therapy modalities and which are not part of an active multi-disciplinary physical rehabilitation

program designed to restore lost or impaired body function, except as may be provided under the Benefits for Autism Spectrum Disorder provision.

Discriminatory benefits. The ACA and its regulations prohibit discrimination in benefit design or implementation. The following provisions in the default EHB benchmark raise concerns:

- The plan covers benefits for tests to detect Human Papillomavirus and cervical cancer including a Pap smear only for women age 18 and older. The arbitrary age limit may be discriminatory.
- The plan contains an exclusion for any services or supplies provided for, in preparation for, or in conjunction with “transsexual surgery.”

Pediatric dental and vision benefits

The summary information for the Texas EHB benchmark plan posted by CCIIO indicates that the Federal Employees Dental and Vision Program (FEDVIP) will be used as the basis for supplementing the EHB category for pediatric dental and vision services. We believe that this benchmark provides a strong basis for these important benefits.

Thank you for the opportunity to comment on these important issues. If you have any questions or need further information, please contact Stacey Pogue at the Center for Public Policy Priorities at pogue@cPPP.org or 512-823-2863.

Sincerely,

ADAPT of Texas
AIDS Foundation Houston, Inc.
Association for Family and Community Integrity, Inc.
Black Transmen Inc.
Breast Health Collaborative of Texas
Center for Public Policy Priorities
Children’s Defense Fund Texas
Children’s Hospital Association of Texas
Coalition for Aging LGBT
Equality Texas
Esperanza Peace and Justice Center
Fairness Fort Worth, Inc.
HOPE Clinic
Houston Area Community Services
Insure Central Texas
Legacy Community Health
Lesbian Health Initiative (LHI) Houston
LIVE CONSORTIUM
March of Dimes
Methodist Healthcare Ministries of South Texas, Inc.
Mental Health America of Greater Houston
Montrose Center

National Association of Social Workers - Texas Chapter
National Latina Institute for Reproductive Health - Texas
Resource Center
Spring Branch Community Health Center
Texas Pediatric Society
Texas Transgender Nondiscrimination Summit
Transgender Education Network of Texas