

September 29, 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

RE: Georgia 2017 Essential Health Benefits Benchmark Plan Comments

Dear Mr. Counihan,

Georgians for a Healthy Future (GHF) is a nonprofit consumer health advocacy organization based in Atlanta, Georgia. We have been actively engaged in monitoring and advocating on Affordable Care Act implementation issues that impact health care consumers in our state.

Thank you for the opportunity to provide public comment. Georgians for a Healthy respectfully submits the following comments to the Department of Health and Human Services (HHS) and Centers for Medicare & Medicaid Services (CMS) in response to Georgia's proposed [2017 Essential Health Benefits \(EHB\) benchmark plans released in the on August 28, 2015](#). Georgia took no action during the 2017 EHB benchmark selection process, thus this is a critical opportunity for HHS to consider our concerns so that EHB benchmark plans do not fall short for consumers.

We recommend that HHS take the following steps to ensure that consumers covered by Marketplace plans hold full coverage as guaranteed by the Affordable Care Act (ACA):

- **Active review of each proposed benchmark.** We ask that HHS actively review each proposed benchmark, analyzing the benefits and limits table, prescription drug information, and evidence of coverage or other underlying plan documents to identify specific gaps and areas where the plan does not comply with ACA regulations and guidance.
- **Disseminating findings from the review.** After completing its review of the benchmarks, HHS should transmit this information to the states, and ensure that state regulators know that QHPs are not permitted to mimic the benchmark in problematic areas. By flagging these problematic plan designs for state regulators, HHS can ensure that state insurance regulators and marketplaces do not perpetuate unallowable coverage by approving QHPs that include these coverage gaps.

HHS must also remind states and issuers that compliance with benchmarks is not the sole standard for plan certification, and issuers offering products in the individual and small group markets must comply with all existing and subsequent regulations and guidance on the EHB, including guidance on preventive services. In addition to providing this information to state regulators, HHS must make it publicly available in order to facilitate consumer advocates' engagement in improving plan design.

- **Spot-checking state-approved QHPs for compliance with ACA requirements.** Once HHS identifies gaps in benchmark plan designs, it must also ensure that these gaps are not carried over into state-approved QHPs. CMS should conduct spot-checks of certified QHPs to determine whether these plans violate the ACA by mirroring gaps in EHB benchmarks, or through other coverage design issues.

Unfortunately, issuers continue to offer QHPs that do not comply with ACA requirements. Georgians for a Healthy Future would like to document the following concerns to CMS regarding Georgia's 2017 EHB benchmark plan to address during the 2017 QHP certification process:

1. **Mental Health Parity.** Despite the 2008 passage of the Mental Health Parity and Addiction Equity Act and subsequent 2013 federal regulations governing application to private insurance plans, Georgia's proposed 2017 EHB benchmarks selected this year contain parity violations that disadvantage consumers with behavioral health needs.

We urge HHS to note these parity violations for Georgia's EHB benchmark plan and to take action so that consumers do not lose out on the comprehensive coverage to which they are entitled under the law. We also ask HHS to convey the process it will use to ensure parity in states' EHB benchmark plans and QHPs.

Georgia's EHB benchmark plan does not comply with mental health parity law in the following way:

- Coverage of outpatient non-surgical and surgical hospital services but exclusion of outpatient services rendered in or by a residential treatment facility

HHS and the state DOI should monitor the following areas because they have the potential to violate the mental health parity and negatively impact the consumer experience in the future:

- Exclusion of acute inpatient residential rehabilitation (an SUD benefit) but coverage of care provided in a skilled nursing facility, which would appear to be an equivalent medical benefit
- Exclusion of court-ordered behavioral health services, treatment related to illegal activity or legal charges, or addiction services that are not "voluntary"

2. **Habilitative Services.** We applaud HHS' action to provide a uniform definition of habilitative care beginning in 2016. This category is an important benefit for all ages and we appreciate HHS recognizing that separate limits for rehabilitative and habilitative care are essential to ensuring consumer access to appropriate and needed services.

Georgia defaulted in its EHB selection process so we urge HHS to review the definition. Georgia's definition of habilitative services and devices does not have many similarities to the federal definition and violates the set standards. Specifically, Georgia has not distinguished habilitative services from rehabilitative services in its definition. In the "Schedule of Benefits" habilitative services apply toward the "physical medicine rehabilitative services" maximum number of visits. Although not a violation, another way in which the state's definition is different, is the exclusion of the term "devices" from the list of services, which makes it incomprehensive.

HHS should ensure that states have incorporated, at a minimum, the uniform definition of habilitative services and devices in the proposed benchmarks. Further, HHS should review and closely monitor the inclusion of habilitative care in plan design going forward. Monitoring and documenting how states and insurers operationalize the uniform definition and how it responds to the needs of consumers will be vital to ensuring consumer access to needed care.

### **3. Nondiscrimination Protections of the ACA**

We want to emphasize the potential discriminatory aspect of benchmark designs that impose arbitrary age limits or other limiting factors based on disability or health condition. In particular, arbitrary limits on the scope of benefits that result in inadequate access to or coverage of certain services constricted by age limits would be in direct violation of the ACA's Section 1557 and proposed implementing regulations.

A particular area of concern related to discriminatory benefit design is the persistence of transgender-specific coverage exclusions in EHB benchmarks and the plans based on them. In order to address issues such as discriminatory transgender-specific exclusions, CCIIO must take concrete steps to ensure that the 2017 EHB benchmarks and the plans based on them reflect the full scope of federal nondiscrimination standards, as well as other applicable coverage reforms established by the ACA.

Thank you in advance for your consideration of our comments on Georgia's 2017 EHB benchmark plan. We hope that the final benchmark plans fully comply with federal regulation by the time 2017 QHPs are reviewed in order to best serve consumers.

Sincerely,

Cindy Zeldin  
Executive Director

Meredith Gonsahn  
Health Policy Analyst

Georgians for a Healthy Future