January 31, 2012

Secretary Kathleen Sebelius
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Re: Essential Health Benefits Bulletin, Center for Consumer Information and Insurance Oversight

Dear Secretary Sebelius:

The Lucile Packard Foundation for Children’s Health is pleased to have the opportunity to submit these comments in response to the Department’s “Essential Health Benefit Bulletin” (“Bulletin”) issued on December 16, 2011. The Foundation’s mission is to elevate the priority of children's health, and increase the quality and accessibility of children's health care through leadership and direct investment. The Foundation has a particular interest in improving the system of care for children with special needs.

Children with special health care needs

As many as 15-17% of children covered under the Affordable Care Act (ACA) will have a physical, behavioral, or mental health condition requiring an above average rate of use of health care services. The Bulletin proposes that states use the largest HMOs or the Federal Employee Health Benefit Plan (FEHBP) as their benchmark. This approach perpetuates the misuse of adult health care experience to guide children's health care coverage. The service needs of children, especially children with chronic or complex health problems, are different from those of adults, and thus require a benefit package designed to meet those unique needs.

The scope of benefits is particularly important for children with special health care needs. The federal definition of these children is that they "...are at increased risk for a chronic physical, developmental, behavioral, or emotional condition and who also require health and related services of a type or amount beyond that required by children generally." This definition emphasizes that these children not only use more services, but the types of services they require are more broad than usual. Their utilization, however, can be needlessly and dangerously limited by an inappropriate benefit package.


The Lucile Packard Foundation for Children’s Health believes that allowing states to design their own approach for caring for children with special health care needs based on the FEHBP or the largest commercial HMO is potentially harmful. HHS should guarantee access to care for children with special health care needs. A study in the *New England Journal of Medicine* found that children in private coverage plans are twice as likely to be underinsured, perhaps due to narrow definitions of medical necessity.\(^3\)

**Medicaid as the benchmark**

The Early Periodic, Screening, Diagnosis and Treatment program in Medicaid (EPSDT) is the only benefit package designed explicitly for children, and which is sufficiently comprehensive to offer appropriate access to all medically necessary services for children with special health care needs. It is especially strong in assuring that necessary preventive care is available.

One hallmark of Medicaid is the flexibility states retain to interpret federal regulations and to modify the benefit package they offer. This has resulted in striking disparities in the access children have to various services depending on the state in which they live. Similar inequities are likely to follow the adoption of other benchmark benefit plans unless they are designed to meet children’s needs, and flexibility is minimized. We recommend that the benchmark for essential benefits for children is the Medicaid program of the states that perform best on measures of children’s health care, e.g., largely the New England states and Iowa.\(^4\)

**Habilitation**

A major distinction between coverage designed for adults versus children is the provision of habilitation services for children. Habilitation services, defined in the Federal Register as “health care services that help a person keep, learn, or improve skills and functioning for daily living…”\(^5\) Habilitation services, conforming to this federal definition are a core component of the EPSDT benefits and should be similarly prominent in the Essential Health Benefit package being developed.

As mentioned in the Bulletin, the concept of habilitation services is virtually unknown to insurers who have designed benefit packages for adults. It is therefore even more important to establish explicit standards to ensure that these services are provided, particularly for children. The Bulletin suggests two options related to habilitation services for a benchmark plan that currently does not offer them. We support adoption of the first option, i.e., “Habilitative services would be offered at parity with rehabilitative services.” However, adopting EPSDT as the standard for children’s benefits would be preferable to either option.\(^6\)

**Conclusion**

The Lucile Packard Foundation for Children’s Health urges that the scope and content of the EHB package be specifically tailored to offer the necessary services, including preventive, developmental, mental, dental, acute, chronic and habilitative services that are required for children’s health and well-being to be assured.

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\(^5\) 76 Fed. Reg. 52529 (August 22, 2011)

and optimized. The Department can be confident that such a benefit package, one that assures appropriate access, care and quality for children with special health care needs, will be adequate to meet the needs of all children. We believe such an approach is consistent with the intent of the legislation and the overall purpose of reforming health care.

If you have any additional questions, please contact Edward L. Schor, M.D., Vice President, (Edward.Schor@LPFCH.org) at the Lucile Packard Foundation for Children’s Health.

Sincerely,

[Signature]

David Alexander, M.D.,
President and CEO