



## Finding Common Ground Principles for Essential Health Benefits

As a result of the Affordable Care Act (ACA), all new individual and small group health insurance plans must include Essential Health Benefits (EHB)—a package of health services of ten benefit areas.<sup>1</sup> In the final Benefit Payment Parameter regulations released in March 2015, CMS provides states a new opportunity to modify their EHB benchmark for the 2017 plan year and beyond.<sup>2</sup> This presents a short window for advocates to influence states' EHB selection in an effort to adjust the benchmark to better reflect the needs of consumers.

Balancing affordability and robustness of coverage is a challenging task. Advocates should work to build consensus on an agenda for EHB based upon a set of shared principles. Given that EHB will have a wide range of implications for consumers,<sup>3</sup> we suggest the following principles to guide the advocacy for a health benefits package that meets consumers' needs at the state level.

**Availability** – EHB must achieve a balance between consumers' needs and health services across the ten federally-mandated benefit categories.<sup>4</sup> For example, a full range of pediatric services should be integrated across all ten categories of the EHB. Similarly, behavioral and mental health services should be reviewed for comprehensive inclusion and parity.<sup>5</sup> Also, now that the United States Department of Health and Human Services (HHS) provides a standardized definition of habilitative care—clarifying the difference between habilitative and rehabilitative services—it is important to closely monitor how habilitative services are defined at the state level.<sup>6</sup> States can no longer allow insurers to define habilitative services and must use the federal definition if it is stronger than a state definition.

**Non-discrimination** – The approach to benefit design must adequately protect consumers from discrimination.<sup>7</sup> To ensure health care security for all consumers regardless of their health status, race, gender, sexual orientation, disability, immigration status and age, EHB must comply with federal laws on non-discrimination including: the Americans with Disabilities Act (ADA), the Mental Health Parity and Addition Equity Act, Title IV of the Civil Rights Act of 1964, and Section 1557 of the ACA.

**Transparency** – Consumers should be able to make 'apples-to-apples' comparisons when buying a suitable health benefits package for themselves and their families. Because insurers can substitute certain services of equivalent actuarial value, this flexibility enables them to cherry-pick healthier consumers by substituting out services that sicker populations rely on. To ensure compliance with standards and adequate benefits, any substitution should be closely monitored for discrepancy. However, currently nine states and the District of Columbia prohibit substitutions in EHBs.<sup>8</sup>

Consumer engagement and feedback to policy makers during the EHB benchmark selection process is critical. We believe that these consumer-friendly EHB principles can unite advocates across the country around a shared vision for 2017 and beyond that sufficiently meets the needs of consumers while respecting the complexity of the issue.

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<sup>1</sup> 42 U.S.C. § 18022.

<sup>2</sup> 45 CFR Parts 144, 147, 153, et al. HHS Notice of Benefit and Payment Parameters for 2016, retrieved from <http://www.gpo.gov/fdsys/pkg/FR-2015-02-27/pdf/2015-03751.pdf>.

<sup>3</sup> Community Catalyst (December 2013), *Essential Health Benefits: Issues to Watch*, retrieved from <http://www.communitycatalyst.org/resources/publications/document/EHB-Issues-to-Watch-Final-12-17-13-pdf.pdf>.

<sup>4</sup> Healthcare.gov Blog, *10 health care benefits covered in the Health Insurance Marketplace*, retrieved from <https://www.healthcare.gov/blog/10-health-care-benefits-covered-in-the-health-insurance-marketplace/>.

<sup>5</sup> Community Catalyst (December 2013), *Final Regulations Strengthen Parity For Mental Health and Substance Use Disorders*, retrieved from <http://www.communitycatalyst.org/resources/publications/document/Final-Regulations-Strengthen-Parity-Final.pdf>.

<sup>6</sup> 45 CFR §156.115(a)(5).

<sup>7</sup> Georgetown University Health Policy Institute: The Center on Health Insurance Reforms (July 2013), *Nondiscrimination under the Affordable Care Act*, retrieved from <http://chirblog.org/new-report-on-state-approaches-to-nondiscrimination-under-the-aca/>.

<sup>8</sup> The Commonwealth Fund (October 2014), *Realizing Health Reform's Potential: Implementing the Affordable Care Act: Revisiting the ACA's Essential Health Benefits Requirements*, retrieved from [http://www.commonwealthfund.org/~media/files/publications/issue-brief/2014/oct/1783\\_giovanelli\\_implementing\\_aca\\_essential\\_hlt\\_benefits\\_rb.pdf](http://www.commonwealthfund.org/~media/files/publications/issue-brief/2014/oct/1783_giovanelli_implementing_aca_essential_hlt_benefits_rb.pdf).