

October 21, 2011

The Honorable Kathleen Sebelius
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Sebelius:

The undersigned organizations are deeply troubled over the August 22nd Notice of Proposed Rule Making (NPRM) issued by the Department of Health and Human Services (HHS), in conjunction with the Labor and Treasury Departments, entitled, "Summary of Benefits and Coverage and Uniform Glossary – Templates, Instructions, and Related Materials under the Public Health Service Act." At issue is the sample Summary of Benefits and Coverage (SBC) document included in the August 22nd proposed regulations given that the Department specifically enumerates "weight loss programs" and "bariatric surgery" under the "excluded services" section on page 4 of the attached sample SBC.

What concerns us is that the Department is sending contradictory messages regarding health benefits coverage to states and health plans as both work together toward developing their State Health Exchange plans. In addition, it is our fear that this proposed sample SBC, a consumer education document, will enable health plans to continue to deny coverage for so many Americans that are affected by overweight or obesity.

WEIGHT LOSS PROGRAMS

For example, in the case of weight loss programs, we are pleased that the Medicare program is proposing to adopt, and define, coverage for intensive behavioral counseling for Medicare beneficiaries affected by obesity. In proposing this step in an August 31, 2011 proposed National Coverage Decision (NCD) memorandum, the Centers for Medicare & Medicaid Services (CMS) states that:

"The evidence is adequate to conclude that intensive behavioral therapy for obesity, defined as a body mass index (BMI) ≥ 30 kg/m², is reasonable and necessary for the prevention or early detection of illness or disability and is appropriate for individuals entitled to benefits under Part A or enrolled under Part B and is recommended with a grade of A or B by the U.S. Preventive Services Task Force (USPSTF)."

The August 31 NCD continues -- outlining and suggesting a very robust schedule for intensive behavioral therapy that recommends a minimum of 20 counseling sessions over a one-year period. We believe that the Department's 2010 regulations implementing provisions of the Affordable Care Act (ACA) related to cost sharing and coverage of

preventive services were the driving force behind Medicare's decision to propose expanding coverage for these critical treatment services.

This coverage decision will have a tremendous effect on addressing our country's obesity epidemic and the costs associated with treating obesity-related co-morbidities among Medicare beneficiaries. Medicare's catalytic efforts on this issue could also hopefully encourage commercial health plans to consider expanding their coverage policy to include intensive behavioral intervention for obesity.

For these reasons, we question the Department's rationale behind suggesting that "weight loss programs" be categorized as an "excluded service" in one of the documents that health exchange plans could use for helping consumers better understand coverage and limitations of certain health care services or benefits. How can HHS propose regulations to provide coverage for intensive behavioral counseling (a weight loss program) for obesity on one hand, and then turn around and suggest that these same services be excluded on a consumer education document?

BARIATRIC SURGERY

While broad coverage for intensive behavioral counseling for obesity is now on the horizon, the same is not true for bariatric surgery. The safety and efficacy of bariatric surgery is well documented and a primary reason why many federal and state government health plans provide coverage for surgical intervention for those with severe obesity. Such federal plans include Medicare, the Federal Employees Health Benefit Plan and Tricare. In addition, bariatric surgery is covered as a standard benefit in at least one health plan offered to all state employees in 44 of 50 states and bariatric surgery is also covered in 47 of 50 State Medicaid Plans. It is also important to recognize that bariatric surgery's effect on comorbidities is powerful -- with an 82% remission of diabetes and similarly good results for other chronic conditions such as hypertension, hyperlipidemia, and sleep apnea.

For these reasons, we again question the Department's intentions in suggesting that bariatric surgery, a widely covered and accepted treatment for those affected by severe obesity, be an excluded service for purposes of "consumer education."

American Dietetic Association
American Society for Metabolic and Bariatric Surgery
The Obesity Society
Obesity Action Coalition
American Association of Clinical Endocrinologists
American College of Surgeons
American College of Osteopathic Surgeons
American Osteopathic Academy of Orthopedics