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Donald M. Berwick, MD, MPP, FRCP
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

RE: CMS-9989-N2: Proposed Rule: *"Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans..."* (42 CFR Parts 153,155, and 156).....originally issued as CMS-9989-P

Dear Dr. Berwick,

As an association representing behavioral healthcare provider organizations and professionals, the National Association of Psychiatric Health Systems (NAPHS) appreciates the opportunity to provide comments on the proposed rule titled *"Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans"* as published in the July 15, 2011, *Federal Register* (CMS-9989-P), with an extension of comment period to October 31 (CMS-9989-N2) as published in the September 30 *Federal Register*.

ABOUT NAPHS

Founded in 1933, NAPHS advocates for behavioral health and represents provider systems that are committed to the delivery of responsive, accountable, and clinically effective prevention, treatment, and care for children, adolescents, adults, and older adults with mental and substance use disorders. Our members are behavioral healthcare provider organizations, including more than 700 psychiatric hospitals, addiction treatment facilities, general hospital psychiatric and addiction treatment units, residential treatment centers, youth services organizations, outpatient networks, and other providers of care. Our members deliver all levels of care, including inpatient treatment, residential treatment, partial hospitalization, and outpatient services.

COMMENTS

The federal healthcare reform law, the *Affordable Care Act* (ACA), creates state-based health insurance exchanges for individuals and small businesses to pool risk and purchase insurance. The exchanges will play a central role in health reform's efforts to expand coverage by creating an organized, regulated marketplace for individuals and small employers to purchase insurance.

In this regard, **it is very important that the exchanges mandated by the *Affordable Care Act* address mental health (MH) and substance use disorders (SUD) in the strongest way possible.** We applaud and appreciate the inclusion of key language in the Centers for Medicare & Medicaid Services (CMS) proposed rule governing the exchanges and health plan participation in the exchanges. The proposed rule was first issued in the July 15, 2011, *Federal Register* (as CMS-9989-P, "Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans"). The comment period was subsequently extended to October 31 as **CMS-9989-N2** in the September 30 *Federal Register*.

Provisions in the proposed rule that will go a long way toward helping beneficiaries with mental health and/or substance use disorder needs include the following:

- Explicit recognition that the law requires exchanges to consult with certain groups of stakeholders as they establish their programs and throughout ongoing operations.
- The specific requirement that the exchanges regularly consult with advocates for individuals with mental health/substance use disorder service needs, both as the exchanges are developed and on an ongoing basis.
- The encouraging of the exchanges to conduct outreach and education activities to promote participation, including outreach and education targeted at hard-to-reach populations and populations that experience health disparities, including individuals with mental health and/or substance use disorders.
- The requirement that the exchanges must establish standards for termination of coverage that requires issuers of qualified health plans (QHPs) to provide reasonable accommodations to individuals with mental or cognitive conditions, including individuals with mental health and/or substance use disorders.

RECOMMENDATIONS

We would like to suggest several improvements to the proposed regulation that would better ensure that the health needs of people with behavioral and substance use disorders are well met.

We recommend that a final rule:

1. **Explicitly recognize and enforce** the essential health benefits requirements of the exchanges – including the **requirement that comprehensive mental health and substance use disorder benefits (at parity with medical/surgical benefits) be covered by all qualified health plans.** We encourage CMS to make clear that the essential benefits package is a central component of the exchanges, and we encourage CMS to make enforcement of benefits requirements a priority. We also ask CMS in future regulations to make clear to states and health insurance plans that the ACA requires a robust benefits package for mental health and substance use disorders that includes the full range of MH/SUD prevention, early intervention, treatment, rehabilitative, and recovery support services. It should be clear that limits on benefits may be no more restrictive than those allowed under the *Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008* and the statute's implementing regulations.

2. **Ensure that coverage is easily accessible for those eligible to receive coverage through the exchange; and ensure that the Navigator programs are sufficiently funded and staffed to facilitate the enrollment process for those individuals for whom the process may be more burdensome and those transferring between Medicaid enrollment and the exchanges.** The exchanges should develop strong enrollment facilitation tools and procedures to ensure that all who are eligible to participate in the exchanges are able to easily access coverage. This is especially important for individuals with mental health and/or substance use disorders as they are more likely to have difficulties navigating a complicated system. We believe a robust Navigator program is critically important to ensure effective exchange outreach and enrollment. We encourage CMS to ensure that Navigator requirements include training on working with diverse populations with diverse health needs, including those with mental health/substance use disorder-related issues. Navigators should receive specific training, and every effort should be taken to ensure that individuals with chronic health conditions, including mental health and substance use disorder conditions, are connected to health insurance coverage that is appropriate for their needs.

3. **Develop and enforce network adequacy standards that ensure access to all essential health benefits, including mental health/substance use disorder benefits.** The ACA requires the Health and Human Services (HHS) Secretary to establish network adequacy requirements for health insurance issuers seeking certification of QHPs. However, the rule proposes to delegate this responsibility to each exchange.

We believe that the final rule should establish national standards that will serve as a minimum level of protection for network adequacy across the country. Such standards can be broad enough to ensure that they are appropriate to each state's needs.

We encourage CMS to add provisions to the final regulations that require all QHPs to demonstrate that they have a sufficient choice of providers accepting their health plan to meet the minimum national network adequacy standards.

4. **Require exchanges to conduct strong outreach and education activities targeted to the public, eligible employers, consumers, and service providers to ensure sufficient access to coverage and benefits.** Successful implementation of the exchanges will require strong outreach and education components to ensure that eligible individuals, employers, and others understand how to access coverage and services.

CONCLUSION

We look forward to working with CMS and HHS to ensure that individuals with mental and addictive disorders have continuing access to essential behavioral health services.

Thank you for your consideration of our comments.

Sincerely,

/s/

Mark Covall
President/CEO