THE FENWAY INSTITUTE

January 31, 2012

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

Submitted to EssentialHealthBenefits@cms.hhs.gov

Dear Secretary Sebelius,

We write on behalf of the Fenway Institute at Fenway Health in Boston to comment on the HHS Informational Bulletin on Essential Health Benefits (EHB) issued December 16, 2011. The Fenway Institute works to make life healthier for those who are lesbian, gay, bisexual, and transgender (LGBT), people living with HIV/AIDS, and the larger community. We do this through research and evaluation, education and training, and public health advocacy. Fenway Health works to enhance the wellbeing of the LGBT community and all people in our neighborhoods and beyond through access to the highest quality health care, education, research and advocacy.

We are hopeful that the Affordable Care Act (ACA), modeled in part on the health care reform accomplished here in Massachusetts, will expand health care access to millions of Americans, end discrimination in health care, reduce disparities, and improve care for people living with HIV/AIDS. However, we have a number of concerns about the approach to Essential Health Benefits described in the December 2011 bulletin.

***Ensure nondiscriminatory treatment by establishing a strong national floor for coverage***

We urge you to ensure that, as this guidance is developed, nondiscrimination protections for people with disabilities, articulated in the ACA in Sections 1302(b)(4)(B), 1302(b)(4)(C), and 1302(b)(4)(D), be enforced. In addition to protecting against insurer discrimination against people living with HIV/AIDS and other vulnerable populations, we urge you to ensure adequate coverage for these populations by establishing a strong national floor for coverage.

***Eliminate small group plans and for-profit HMOs as benchmark options for states***

Specifically, we urge HHS to eliminate small group plans and for-profit HMOs as benchmark options for states. Such plans frequently offer less comprehensive coverage than large group plans, state employee plans, or the federal employee plan. They often have more coverage restrictions and higher cost-sharing requirements, which can be especially onerous to people on limited incomes and with expensive

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health conditions. We therefore encourage HHS to eliminate small group plans as a benchmark option, and to limit the HMO benchmark option to non-profit HMOs.

***Prohibit plans from substituting benefits across and within categories***

Second, the intent of the ACA was to establish a high floor of coverage that enrollees could count on regardless of where they live. Allowing plans to substitute benefits, as the December 2011 EHB proposal does, could lead to limits on or the denial of certain services to discourage some individuals with preexisting conditions from enrolling. HHS should prohibit plans from substituting benefits across and within categories.

***Ensure access to essential care and treatment for people with HIV/AIDS and other vulnerable populations***

Third, it is essential that the EHB include protections to ensure that people with HIV/AIDS and other vulnerable populations have access to essential care and treatment. People with HIV/AIDS must take at least three antiretroviral (ARV) drugs to effectively suppress HIV. Allowing plans to cover only one drug in each category covered by the benchmark, as proposed in the Informational Bulletin, could mean that people with HIV are not able to access the life-saving ARVs that revolutionized HIV care in the mid-1990s. Utilization controls, such as requiring prior authorization to access ARVs, could also hinder access to treatment. Explicit language in EHB guidance and future HHS regulations is essential to ensure that people with complex health conditions like HIV are able to access all medications necessary to treat their disease according to federal treatment guidelines. HHS should also issue guidance to ensure access to comprehensive mental health and substance use services, prevention services, chronic disease management, and other elements of the 10 statutorily mandated EHB categories.

***Ensure that patients can access the care they need based on the standard of care***

Fourth, we urge HHS to include patient protections to ensure that patients can access the care they need based on the standard of care, not cost. People with HIV/AIDS, cancer, and other chronic disease may require frequent medical visits and laboratory tests to ensure their health. Service or benefit limitations could hinder this goal. People should also be able to access specialists without paying excessive co-payments they cannot afford. Again, HHS should ensure that these scenarios do not occur by writing patient protections into EHB guidance now.

***Ensure that prevention services and mental health/substance use services are clinically competent to serve LGBT people***

Finally, we urge HHS to continue its leadership in highlighting and working to reduce LGBT health disparities by ensuring that prevention services and mental health services are clinically competent to serve LGBT people. As documented in Health People 2020 and the 2011 Institute of Medicine report on LGBT health, there are significant documented health disparities affecting lesbian, gay, bisexual and

transgender (LGBT) people. Barriers to LGBT people accessing clinically competent health care include a lack of providers trained to address the specific health care needs of LGBT people, a lack of culturally appropriate prevention services, and a lack of clinically competent mental health and substance use services.

We urge HHS to work closely with advocates and providers with expertise in LGBT health to ensure that access to clinically competent prevention and mental health/substance use services. This is important everywhere, but especially so outside the metropolitan areas in rural America.[1]

There is also a need for accessible, culturally appropriate care, across the continuum of medical and behavioral health care for LGBT people and for knowledgeable providers to deliver this. The range includes primary care, emergency care, specialty care, hospital based care including critical care, and post acute care services in rehab, skilled nursing and assisted living facilities that may be included as Accountable Care Organization services.

We realize that some of this work is outside the scope of the Essential Health Benefits proposal. However, nondiscrimination language in EHB guidelines and regulations that explicitly mention LGBT people's needs for prevention and mental health/substance use services could ensure access to these critical services.

We appreciate all the unprecedented steps that the Administration and the Department have taken to advance LGBT health and HIV prevention and care. We hope you will consider these comments and recommendations on this critical element of health care reform implementation. Should you have any questions or desire further information about the issues described herein, please contact me at 617-927-6400.

Sincerely,

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[1] Willging, CE, Salvador, M, Kano, M. Unequal treatment: Mental health care for sexual and gender minorities in a rural state. *Psychiatric Services*. 2006; 57: 867-870.