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Robert I. L. Morrison

December 26, 2012

Marilyn Tavenner, Acting Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

RE: **CMS-9980-P**, Patient Protection and Affordable Care Act Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation

Dear Administrator Tavenner:

The National Association of State Alcohol and Drug Abuse Directors (NASADAD) appreciates the release of the proposed rule - *Patient Protection and Affordable Care Act; Standards Related to Essential Health Benefits (EHB), Actuarial Value and Accreditation.* NASADAD represents State substance abuse agency directors in all 50 States, seven territories and the District of Columbia who oversee and implement efficient prevention, treatment and recovery systems. We thank you for your strong commitment to making substance use disorders (SUD) and mental health (MH) a top priority and for your continued work with the Substance Abuse and Mental Health Services Administration (SAMHSA) on the EHB and Affordable Care Act (ACA) implementation.

Specifically, we appreciate the proposed rule's explicit recognition of the Affordable Care Act requirement for the EHB to include SUD and MH services, and in a manner consistent with the requirements of the Mental Health Parity and Addiction Equity Act (MHPAEA). According to the latest National Survey on Drug Use and Health (NSDUH) in 2011, 21.6 million people aged 12 or older needed treatment for a drug or alcohol use problem. During the same year, only 2.3 million persons received treatment in a specialty facility. Among those individuals who made an effort to receive treatment, two of the most often cited barriers were lack of health insurance and not being able to afford the cost of services. Implementation of ACA, specifically the EHB provision, is a key component to assisting individuals who need SUD services to access them through Exchanges and the Medicaid expansion.

The release of the proposed rule is critical in providing guidance to States in order for them to move forward with implementing the ACA. However, we believe more specific guidance in some areas would benefit States working

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to comply with the statutory requirements of the law. The following is a summary of our concerns with the proposed rule and recommendations for the final rule:

1. While the proposed rule is clear that the requirements of MHPAEA apply to the EHB, the rule does not provide sufficient clarity about how these requirements apply and the process to supplement inadequate coverage. Based on the analysis we have been able to do with the limited information we have available, the scope of MH and SUD coverage appears to be significantly more limited than the medical/surgical coverage in many of the EHB benchmarks. Without complete, detailed plan information about benefit coverage in each of the base-benchmark plans, it is not possible to fully determine whether the MH and SUD coverage in each of the States complies with parity. In the final rule, we urge HHS to provide a detailed framework for State substance abuse agencies, mental health commissioners, insurance commissioners, exchanges, consumers, providers, and other stakeholders to detail the process for supplementing plans with deficient MH/SUD coverage to ensure that the EHB meets parity requirements. We also strongly urge that the final rule reinforce statutory language that both MH and SUD coverage be offered equal to medical/surgical coverage, and specify that covering only MH benefits and not SUD benefits, equal to medical/surgical benefits would not constitute compliance with MHPAEA. The ACA statute as well as MHPAEA clearly state both MH and SUD must be offered at parity to medical/surgical benefits. In addition, we urge HHS to conduct a comprehensive and transparent parity analysis of all EHB packages and release this information and other detailed benefit information for the States as soon as possible.

2. State Substance Abuse Directors continue to express confusion about how to supplement deficient coverage in plans that don't comply with parity and, in the absence of clear rules and an enforcement mechanism this may delay implementation. In addition, there is concern, should they supplement a base benchmark to bring it into parity compliance, that they will be held financially responsible for the costs associated with the supplemented services. We urge HHS to provide clear language in the final rule that parity is required, identifying the process through which noncompliant coverage must be brought into compliance, and reinforcing that States will not be held financially liable for bringing the EHB into compliance.

3. Section 1302 of the ACA requires the EHB to be designed in a way that does not discriminate against individuals. Although the proposed rule re-states the non-discrimination provisions of the law, the rule does not identify a standard to determine whether the coverage provided complies with those provisions of the law. The proposed rule also fails to establish a process to bring discriminatory benefit design or implementation into compliance with the law. We ask the Department to clearly identify a non-discrimination standard, provide examples of what would constitute violations, and include clear and strong federal enforcement provisions and penalties for violations.

4. The proposed rule states that only if a selected benchmark plan does not cover any services in a category must that category be substituted. There is no further discussion of what that means, what benefit or benefits would constitute coverage in each category, or examples of what actual threshold for substitution might be required or allowed. There is also no explanation of what appears to be the Department's position that a category could include only a single service or benefit and still comply with the EHB requirements of the ACA. In the final rule, we ask HHS to clarify what benefits would constitute coverage in each category, and explain how the Department intends to define and enforce the non-discrimination and balance requirements in this context.

5. Lastly, we are concerned that included as part of the summary of each State's proposed EHB benefit, limits and prescription drug coverage (http://cciio.cms.gov/resources/data/ehb.html), the prescription drug list includes the term "Opioid Antagonist" as a classification in the category anti-

addiction/substance abuse treatment agent. We recommend using the term "Opioid Addiction Maintenance/Detoxification Medications" instead. This is a broader term and includes all drugs or combinations of drugs that have been approved, under the Federal Food, Drug, and Cosmetic Act or section 351 of the Public Health Service Act, for use in Opioid maintenance, detoxification, or treatment.

Thank you again for the opportunity to provide comments on this important issue. As your work continues on the EHB, please feel free to use NASADAD as a resource.

Sincerely,

Rob Morrison
Executive Director