



4511 North Himes Ave., Suite 250
Tampa, FL 33614

(800) 717-3117
(813) 872-7835
Fax: (813) 873-7838

info@obesityaction.org
www.obesityaction.org

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 more than 33,000 patient advocates of Obesity Action Coalition (OAC) are deeply troubled over the August 22, 2011 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."

The OAC is a national 501(c)3 non-profit organization dedicated to giving a voice to individuals affected by obesity through education, advocacy and support. One of the major core beliefs of the OAC is that the negative stigma associated with obesity must be eradicated as this stigma greatly hinders efforts to recognize obesity as a disease and extend to it the same benefits as any other disease state. For these reasons, we are deeply troubled that the sample Summary of Benefits and Coverage (SBC) document included in the NPRM negatively targets obesity treatment services by specifically enumerating "weight loss programs" and "bariatric surgery" under the "excluded services" section on page four of the sample SBC document.

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.

Many federal programs such as Medicare, Medicaid, Tricare and the Federal Employees Health Benefits Plan provide coverage for various obesity treatment services. In addition, many medium and large employers have recognized the benefit, both from an economic and quality of life perspective, of providing treatment for their employees and family members who are affected by obesity. Unfortunately, this philosophy has not translated down to the small employer and individual markets, which sadly many believe should represent the scope of covered benefits for the essential health benefit package that HHS must now formulate in the wake of the recent Institute of Medicine's (IOM) Consensus Report entitled, "Essential Health Benefits: Balancing Coverage and Cost."

The OAC questions some of the private health plan documents that the IOM chose to include in its report to illustrate examples of benefits currently offered in the small employer market. These documents show little or no coverage for obesity treatment services and perpetuate the false assumption that these services are either not medically necessary, or not in line with generally accepted standards of medical care despite scientific evidence to the contrary.

In addition, we are disappointed by the IOM's suggestion that these types of small employer plans should be used as the template for the typical benefit design for the targeted state health exchange plan population. However, in making this



4511 North Himes Ave., Suite 250
Tampa, FL 33614

(800) 717-3117
(813) 872-7835
Fax: (813) 873-7838

info@obesityaction.org
www.obesityaction.org

statement, IOM did include language in its report about the necessity of protecting special categories of services due to “shortcomings in current coverage.”

“The 10 categories of care designated in Section 1302 for inclusion in the essential health benefit package are a mix of condition-specific care (maternity and newborn care), types of services (laboratory services), facility-based care (hospitalization), and age-based services (pediatric services): Consequently, some categories overlap; for example, if maternity care was not a separate category, those services could be classified among the others.”

Congress, however, sought to remediate what it saw as shortcomings in current coverage by pulling out certain categories to ensure that they were covered, such as maternity services, mental health and substance abuse disorder services, and habilitative services. Habilitative services are distinct from rehabilitation, in that it is designed to help a person first attain a particular function, versus restoring a function. As was remarked during one of the committee’s workshops, a separate listing of mental health and substance abuse disorder services would not be required if parity had truly been achieved. Others noted that coverage of maternity care has frequently not been a standard offering in the individual market; instead, until the ACA requirement goes into effect, it must be purchased as an additional policy rider that is frequently “expensive and limited in scope” (NWLC, 2008).”

While the OAC would have preferred to have “obesity treatment services” listed as one such “protected category of service” in the benefit package, we do believe that, at a minimum, these critical services should be clearly enumerated under the “chronic disease management” section of the EHB package. Certainly, we would argue that it would be a tragic setback for societal acceptance of treating obesity should HHS suggest that treatment services such as evidence-based weight-loss programs and bariatric surgery be considered as traditional services that health plans should exclude.

Treating or addressing obesity among those already affected by obesity is difficult. This is clearly demonstrated by the more than 34 percent of Americans who are currently affected by obesity. However challenging though, efforts must be made to both prevent and treat obesity at all stages and in all age groups.

Unfortunately, the disease of obesity is the last acceptable form of discrimination in today’s society. Individuals affected by obesity are stigmatized in healthcare, education, employment and mass media. Those affected by obesity have also been the target of acts of negative stigma such as IQ testing requirements for those seeking obesity treatment, illustrated depictions on national billboards comparing an individual affected by obesity to a whale and much more. These instances of stigma only further hinder efforts to raise awareness of this disease and provide it with the respect it deserves and needs.

To better understand the situation of those affected by obesity – who often find themselves without access to any form of covered obesity treatment – we often urge policymakers to go back in time 20 years ago to the coverage situation facing the millions of Americans affected by mental illness or addiction. After decades of intense advocacy efforts by the mental health and substance abuse communities, Congress and the President chose to specify these services in the EHB because of the pervasive discrimination and stigma that was, and still continues today, to be associated with mental illness and addiction. Treating obesity is deserving of the same consideration as treating mental illness. Those seeking obesity treatment face the same societal hurdles facing those impacted by mental illness and substance use.

Today, 93 million Americans are affected by obesity! For the first time in history, America’s children are being diagnosed with type 2 diabetes, hypertension and are said to have a shorter life-expectancy than that of their parents. Thankfully,



4511 North Himes Ave., Suite 250
Tampa, FL 33614

(800) 717-3117
(813) 872-7835
Fax: (813) 873-7838

info@obesityaction.org
www.obesityaction.org

with the advancements in modern medicine and an open mind by policymakers, we can reverse this trend. We urge HHS to use its wide discretionary powers in defining the benefit package and stand up for those who struggle with obesity as we're sure you will do for those affected by mental illness and addiction.

If this is not possible, the OAC implores HHS to, at a minimum, "first, do no harm" by finalizing such a flawed sample Summary of Benefits and Coverage document in the August 22, 2011 NPRM. Final approval of a "consumer education" document that is clearly prejudicial toward such a vast population of Americans is not only contradictory to past and recent federal coverage policy decisions surrounding obesity treatment, but could easily be viewed as violating the Affordable Care Act provisions regarding discrimination against individuals because of their age, disability status or expected length of life.

Again, the OAC appreciates the opportunity to provide comments regarding this critical issue. Should you have any questions, please don't hesitate to contact me. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Nadglowski".

Joseph Nadglowski
OAC President and CEO